Supreme Court, U.S.
FILED

10-742 NOV 29 2010

No. OFFICE OF THE CLERK

IN THE
Supreme Court of the United States

Lt. Colonel Donald Sullivan
Petitioner

V.

STATE OF NORTH CAROLINA
Respondent

On Petition for Writ of Certiorari
To The North Carolina Court of Appeals

PETITION FOR WRIT OF CERTIORARI

Donald Sullivan, *Sui Juris*
Petitioner
Lt. Colonel, USAFR(R)
c/o General Post
Atkinson, North Carolina
[28421]
Ph. #910-617-2559

Questions Presented For Review

I, Petitioner Lt. Colonel Donald Sullivan, a natural born citizen of the United States entitled to all rights and privileges granted or protected by the 1st, 2nd, 4th, 5th, 6th, and 14th Amendments to the Constitution of the United States, come now before this Court on Appeal, specially but not generally, seeking resolution of my questions presented for review; and requesting this Court reverse my conviction by the court below, or in the alternative remand this case to the Superior court for a new trial. The questions for review follow:

I. A. Whether there exists under constitutional law a "right to bear arms which shall not be infringed", or has that right been converted to a regulated privilege?

B. If such a right to bear arms does exist under federal constitutional law, whether or not, the several united States and the Territories of the United States of America can legislate mandates, under penalty of law, which burden, prohibit or permit said right to bear arms; or, are such burdens unconstitutional?

II. Whether or not, the court below violated my protected rights in its assumption of jurisdiction *in personam* and *in rem* over me, my private property and my use of said private

property without having proven said jurisdiction over my objections, a denial of due process?

III. Whether the trial court abused its judicial discretion and violated its oath by excluding the Constitution from evidence; by instructing the jury, with threat of jail, against reading the Constitution during the trial; and by disallowing a constitutional defense of the federally protected right to bear arms?

IV. Whether the trial court erred by disallowing a "willfulness" defense and basing its decision upon the charging statute's lack of a "*mens rea*" requirement, the original charge being for my "unlawfully and willfully" violating the statute?

V. Whether the trial court committed reversible error when it denied me my constitutional right to my private property by ordering my weapon held for destruction by the bailiff, disregarding that the weapon had not been used in the commission of any crime against the public's, or any individual's, rights to life, liberty or property.

VI. Whether the trial court committed plain, reversible error by being improperly set due to the failure of the court to administer a proper oath to the members of the jury?

VII. Whether or not the courts below acted in violation of my right to counsel of choice when I was denied access to a lay person, not a licensed attorney, chosen by me as "Next Friend" to assist and counsel me at the "defendant's table" during the trial in Superior Court?

VIII. Whether the opinions of the courts below denied me the rights to equal protection under the law and to the due process guaranteed in the Fifth and Fourteenth Amendments to the United States Constitution by failing to comprehend that the charging statute in this matter is overbroad, overinclusive and unconstitutional in its application to me under the circumstances of the charged offenses.

TABLE OF CONTENTS

INDEX TO APPENDICES..... iv

TABLES OF AUTHORITIES CITED..... iv

OPINIONS BELOW..... 1

JURISDICTION 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.. 3

STATEMENT OF THE CASE..... 5

REASONS FOR GRANTING THE PETITION 45

CONCLUSION 46

INDEX TO APPENDICES

APPENDIX A - Opinion of the North Carolina Court of Appeals entered 16 February, 2010, finding "no error" in the lower court's findings.

APPENDIX B - Order of the North Carolina Supreme Court denying my Appeal of Right and Motion for Discretionary Review entered on 1 September, 2010.

APPENDIX C - Excerpt from "Without Intent" by Brian Welsh and Tiffany Joslyn, May 5, 2010, from The Heritage Foundation and the NACDL

APPENDIX D – Cited Reference Law

APPENDIX E – New York State Bar Journal March/April 1997, "Public Officers, Beware! No Excuses Accepted", By Carolyn H. Mann

APPENDIX F - Expanded Case Cite Quotations (In order of appearance)

TABLE OF AUTHORITIES CITED

CASES

Argersigner v Hamlin, Sheriff 407 U.S. 425 ... 37
Alexander v. Bosworth (1915), 26 C.A. 589 21
Bliss v. Commonwealth, 12 Ky. (2 Litt.) 90 18
Bolling v Sharpe, 347 U.S. 497 41
Br'rh'd of RR v VA ex re VA St. Bar, 377 US 1,6 .. 38
Brown v. Merlo, 8 Cal.3d 855 42
Browne v Keene, 33 US 112 23
Chandler v Frietag, 348 US 3 38
Cheek v. United States, 498 U.S. 192 31
Clearfield Trust Co. v US, 318 U.S. 363 21
Commissioner of Corr's, et al, 393 US 483 38
Cooper v. City of Greenwood, 904 F.2d 302 34
DC v. Heller, 478 F. 3d 370 10
Fr. v. Amalgamated Lcl Un., 376, 203 Conn. 624. 42
*Galvin v. Mill Co.*98 Cal. 268 32
Georgia v. Pennsylvania R. Co., 324 U.S. 439 24
Haines v Kerner, 404 US 519, ... 6
Hale v Henkel, 201 US 43 23
Harris v McRae, 448 US 297 16
Haynes v U.S. 390 U.S. 85 36
Hazle v. So. Pac. Co., 173 Fed. 431 32
Hendrick v. Maryland, 235 U.S. 610 43
Isakson v. Rickey, 550 P.2d 359 42
Johnson v Zerbst, 304 U.S. 458 38
Joyce v. US, 474 F2d 215 19
Lo Bue v. Porazzo 48 Cal.App.2d 82 22
MacDonald v. Chicago, 561 US ____ 9
Maine v. Thiboutot, 100 S. Ct. 2502 19
Marbury v. Madison, 5th US (2 Cranch) 137 16
Marchetti v US, 390 US 39 16
Miller v. State (Okl.) 130 Pac. 813 32

Miller v. U.S. 230 F 486 16
Miranda v. Arizona, 384 U.S. 436 16
Miss. So. v Bd of Pardon & Parole 896 A2d 809 . 20
Mobile v Bolden, 446 US 55, 76 16
Morissette v. United States, 342 U.S. 274 32
Mylan Labs, 7 F.3d at 1134 6
NAACP v Button, 371 US at 429 38
Norton vs. Shelby County 118 U.S. 425 16

Picking v Pennsylvania R. Co. 151 Fed, 2nd 240 .. 6
Powell v. Alabama, 287 U.S. 45 38
Pucket v Cox 456 2nd 233 5
Reading R.R. Co. v Johnson,7 W & S (Pa.) 317 22
Reynoldson v Shillinger 907F. 2d 124, 126 (10th) .. 6
Sims v Aherns, 271 S.W. 720 38
Singh v Daimler-Benz AG, 9 F.3d 303 41
Stanard v Olesen, 74 S. Ct. 768 19
State v. Bell, 285 NC 746 32
State v Dawson, 272 N.C. 535 9
State v. Kerner, 181 N.C. 574 17
*State v Phillips*152 N.C. App. 679 43
Stuck v Medical Examiners, 94 Ca2d 751 19
State v. Sullivan, NC COA File #09-705 24
Schware v. B'd of Ex'rs, US Reports, 353 U.S. 238. 38
Thompson v Smith 154 SE 579 8
UNC v Foy, 2 Howard NC 310 8,25
United States v. Jackson, 390 U. S. 570 43
US v Johnson, 350 US 179 12,43
US v. Mitchell, 246 F. Supp., 874 38
US v Tarlowski, 305 F.Supp. 112, 1969 38
Wickard v Filburn, 317 US 111 6,18
Wisconsin v. Pelican Ins. Co., 127 U.S. 265 24
Wright v. US 302 US 583 25,39
Wuebker v. Bowles, 58 N.Y.S.2d 671 12
Young, 140 N.C. App. at 12 31

STATUTES AND RULES

27 CFR 72.11 20
5 USC Section 556(d) 18
18 USC, Ch. 43, Sec. 912 37
18 U.S.C. Section 922 15
28 U.S.C., Section 1257(a) 2
NCGS 9-14 35
NCGS 11-11 35,36
NCGS 14-269.1 33
NCGS 14-269.4 14,15,40,45
NCGS 14-288-7 14,15
NCGS 128-5 37
NCGS 128-6 37
NYPL 30(1)(h) 37
F. R. of Civ. P., Rule 17(a) 19

OTHER

"Act of Cong. of June 1, 1789", 1 Story's LUS p. 1. 35
Black's Law Dictionary, Eighth Edition 32
Bouvier's Law Dictionary, 1914 39
"Judiciary Act of Sept. 24, 1789", c. 20, § 13 24,27
"Public Officers, Beware! No Excuses Accepted"... 36
"Right to Keep and Bear Arms Report of ...16,17,27
The Subcommittee on the Judiciary", United
States Senate, 97th Congress, February 1982
Webster's Dictionary, 1989 Edition 8
"Without Intent" by Brian Welsh and 29
Tiffany Joslyn, May 5, 2010, from The Heritage
Foundation and the NACDL

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgments below.

OPINIONS BELOW

The opinion of the North Carolina Court of Appeals appears at Appendix A to the petition and is published.

The order of the North Carolina Supreme Court denying appeal of right appears at Appendix B to the petition and is published.

JURISDICTION

The date on which the North Carolina Supreme Court allowed the Appellee's motion to dismiss my appeal of right in this matter was August 26, 2010. The date on which the North Carolina Supreme Court denied my Petition for Discretionary Review in this matter was also August 26, 2010. The order was entered by the clerk on September 1, 2010. A copy of that order appears at Appendix B. No petition for rehearing was timely filed in this case.

The jurisdiction of this Court is invoked under 28 U.S.C., Section 1257(a) and Article III, Constitution of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States, Article III, Section 2, cl. 2: "In all cases...in which the State shall be a party, the supreme Court shall have original jurisdiction. In all the other cases before mentioned [Art. III, Section 1, cl.1], the supreme Court shall have appellate jurisdiction, both as to law and fact..."

Constitution of the United States, Article VI, Clause 2:

"[A]ll Executive and Judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution;..."

Constitution of the United States, Article I, Amendments to the Constitution: "Congress shall make no law respecting the establishment of religion...or abridging the freedom of speech...; the right of the people...to petition for a redress of grievances."

Constitution of the United States, Article II, Amendments to the Constitution: "A well regulated Militia, being necessary to the security of a free State, the right of the People to keep and bear Arms, shall not be infringed."

Constitution of the United States, Article V, Amendments to the Constitution: "No person shall be...compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall property be taken for public use without just compensation."

Constitution of the United States, Article VI, Amendments to the Constitution: "In all criminal prosecutions, the accused shall enjoy the right to...have the assistance of Counsel for his defense."

Constitution of the United States, Article X, Amendments to the Constitution: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Constitution of the United States, Article XIV: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article I, Section 5, Constitution of the State of North Carolina:
"Every citizen of this State owes paramount

allegiance to the Constitution and government of the United States, and no law or ordinance of the State in contravention thereof can have any binding force."

Article I, Section 30, Constitution of the State of North Carolina:
"A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed; and, as standing armies in time of peace are a dangerous to liberty, they shall not be maintained, and the military shall be kept under strict subordination to, and governed by, the civil power. Nothing herein shall justify the practice of carrying concealed weapons, or prevent the General Assembly from enacting penal statutes against that practice."

Article VI, Section 7, Constitution of the State of North Carolina:
"Before entering upon the duties of an office, a person elected or appointed to the office shall take and subscribe the following oath:

'I, _____, do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as _____, so help me God.'"

STATEMENT OF THE CASE

Now come I, Donald Sullivan, **a natural born, flesh-and-blood man entitled to all rights and privileges granted or protected by the 1st, 2nd, 4th, 5th, and 14th Amendments to the Constitution of the United States.**

I do not knowingly accept, receive or anticipate receiving any form of benefits from either the government of the United States or the State of North Carolina which would grant any authority over my rights or person in the manner set forth in *Wickard v. Filburn*, 317 US 111 (1942) (See App. F.), including my military pension and social security. I am not a registered voter and keep no bank accounts or credit cards. I have rescinded my SSN and do not have US mail delivered as a benefit.

I respectfully request the court to consider the substance of my pleadings and arguments and not the form, holding this *sui juris* litigant to less stringent standards than lawyers; to "accept as true all well-pleaded allegations and view the [petition] in a light most favorable to" me. Pursuant to *Haines v. Kerner*, 404 US 519, and *Mylan Labs*, 7 F.3d at 1134. 92 S.Ct. 594; not to dismiss my petition "unless...it appears beyond doubt that [I] can prove no set of facts in support of [my] claim which would entitle [me] to relief', since such pleadings are to be considered without

regard to technicality. *Picking v. Pennsylvania R. Co.* 151 Fed, 2nd 240, and *Pucket v. Cox* 456 2nd 233; and, to remain mindful that litigants appearing as themselves are to be given reasonable opportunity to remedy the defects in their pleadings or filings. See *Reynoldson v Shillinger* 907F. 2d 124, 126 (10th Cir. 1990).

Pender County Deputy Hugh Frazier initiated this action 13 May, 2008, by arresting me for allegedly violating NCGS 14-269.4, while I was in a casual meeting with the acting clerk of court and the court bookkeeper. I was taken handcuffed to the magistrate who erroneously issued her order charging that "Donald Wayne Sullivan", SSN 239-25-9750 (a person and number unknown to me) "unlawfully and willfully did possess and/or conceal a deadly sidearm to wit: 9MM handgun in the Pender County courthouse, Burgaw, NC." I was found guilty at a bench trial in District Court on 13 August, 2008.

I was convicted in a jury trial held in superior court on 18 and 19 November, 2008. The record on appeal was settled and filed on 21 April, 2009, and docketed on 20 May, 2009. On 5 November, 2009, I filed a Motion for Appropriate Relief, but was denied by the Court of Appeals on 16 February, 2010.

My appeal was denied on 17 June, 2010, with affirming opinion issued 23 June, 2010. (See

App. A). My Appeal of Right and Petition for Discretionary Review were denied on 26 August, 2010. Entry of the order was made by the clerk of the NC Supreme Court on 1 September, 2010. (See App. B).

I.

I ask this Court to consider whether the constitutional "right to bear arms" actually exists *de facto* as well as *de jure*, or has the "right" actually slipped through our fingers in the past 100 years? This discussion of the "right to bear arms" leads us directly to a discussion of "standing": How does the presumption by the State of authority over that right, or any right, exist where no such authority has been granted by any threat, by any action, by any contract or by any waiver where there is no "injured party"?

The Second Amendment is not complicated, yet "shall not be infringed" seems so hard to comprehend for those passing and interpreting laws to "protect" the people. "Infringed" means "violated" or "encroached" (Webster's Dictionary of the English Language, 1989 Edition), nothing more. Any regulation of a right violates that right and is in contravention to it. Perhaps, if the amendment had said "shall not be regulated", we wouldn't be having this discussion.

This constitutional hierarchy can be no better explained than in *University of North Carolina vs. Foy*, 2 Howard NC 310, 1805 (See App. F-1): "The Constitution is certain and fixed." It is the

Supreme Law. None but those who authorized it may change it. The legislative, the executive and the judiciary are powerless to lawfully amend it.

The former Chief Justice of the North Carolina Supreme Court, I. Beverly Lake, Jr., was on point when he stated the following in his dissenting opinion for *State v. Dawson*, 272 N.C. 535, 546, 159 S.E.2d 1, 9 (1968):

"I am unable to understand how a right can be regulated without being infringed. (See App. F-1)

It appears this Court in *DC v. Heller*, 478 F. 3d 370 (2008), conceded the right to self-defense includes but the right to keep and bear arms in the home, then only if a "license was procured". You went even further in *MacDonald v. Chicago*, 561 US ____ (2010), by stating that the 2nd Amendment was applicable to the States, but, again, only so far as to allow citizens to keep and bear arms within the home.

It seems proper that "the right to keep and bear arms shall not be infringed" must extend much further than this Court has yet been willing to proceed. The natural right of self-protection cannot be restricted merely to one's own domicile, and a right doesn't require licensing. No matter where one goes, especially today, his life, liberty and property may be placed in jeopardy by another at any time. One must ever be prepared to defend himself, his family and his property from those who would

deprive him of it. A criminal with a gun need not fear a citizen without one; "When seconds count, the police are only minutes away."

A perfect case in point occurred when I was deployed with my squadron to a hot spot in Central America in 1987. Soon after the deployment, I learned that we had been sent *sans* weapons. The squadron had no internal defensive weapons, depending solely on the nearest US Army unit to provide defense from 50 miles away. When I questioned the wisdom of this decision, I was told that, "We can't trust these airmen with weapons. They may hurt themselves or someone else, so we decided to leave the weapons at home base."

When I heard this idiocy from my operations officer, I refused to fly any missions until we were fully armed with live ammunition. We got weapons and ammo the very next day. On our second mission, we were forced to make an emergency landing in a small clearing surrounded by jungle. On the way in we saw not one dwelling under the jungle canopy. Almost as soon as we had the rotors stopped, at least 200 men and women came into the clearing. Every man I saw had a shotgun, a rifle, a handgun or a machete. Had we not been armed and willing, we would have been massacred; and the United States government would have covered it up due to the then current "political situation".

Imagine if it happened in this country. How

many of us would come out of the woods armed and prepared to defend ourselves against an enemy? As Founder Thomas Jefferson said, "Those who hammer their guns into plows will plow for those who do not."

How different is the above analogy from the attitude of our government which thinks it must protect the people from themselves by disarming them? As another Founder, George Mason, opined, "To disarm the people is the best way to enslave them." We did not grant the government that authority!

While this Court admirably defined the history and purpose of the Second Amendment in *Heller* and *MacDonald*, *supra*, it is apparent that you missed the mark when it comes to its spirit. It appears that, rather than strictly interpret the Second Amendment in its fullest and rightful sense, this Court took the opportunity to cunningly rewrite it, ostensibly giving the individual right to "keep" arms back to us, while still overlooking the right to "bear" arms. Even the NRA was fooled.

The exercise of the keeping and bearing arms does not need a license or any permission from government. Our rights are "antecedent to the organization of the state" (See *Hale v. Henkel*, 201 U.S. 43, 1906, at App. F-2). It cannot be limited to the confines of one's own property or house. It intends that the citizens not only "keep" arms in their home, but also "bear" arms

wherever they go. When we remove the peoples' right to bear arms, we create slaves and helpless pawns. So, this instant case proposes to take the infringements off our "right to keep and bear arms", no matter where we are and no matter what restrictions the State tries to place upon it, as long as we act responsibly. "An armed man is a citizen. An unarmed man is a subject." (John Adams)

The State of North Carolina cannot default to its Tenth Amendment reserved "police powers" in order to so burden our right to bear arms, because it is bound by the chains of the Constitution, the 2nd and 14th Amendments and federal funding. Yet, the right to keep and bear arms has been gutted by the State due to our willingness to subjugate our rights to cunning state coercion and to allow the right to be converted into a regulated "privilege". (See *US v Johnson*, 350 US 179, at App. F-4) It is difficult today in this State to know definitively where it is "illegal" to carry a gun. Many people fear carrying one because they can't feel secure from arrest by overzealous government agents who only think they know the law.

For example, this past September, I was visited by two police officers responding to a complaint I was seen openly carrying a sidearm in an outdoor area where other people were present. After confirming with them that my right to bear arms was intact and I had not been

terrorizing the public in any way or breaking any law, I asked why they hadn't just informed the complaining party I had a right to have a sidearm. "It wouldn't do any good", they said. I also asked them if they would confiscate personal weapons if the State's "Emergency Gun Ban" (*infra*) was implemented, and they said they would. When I told them the ban was unconstitutional, they admitted they didn't know much about the Constitution. I gave the department seventeen copies of it. ("The people should not fear their government. The government should fear the people.")

By illustration, I was recently told by a local Chief of Police that the mere act of carrying a holstered sidearm "is" deemed an illegal act because it can be construed as "carrying a weapon to the terror of the public." How absurd!

Responsible citizens who carry guns always check signage as they enter buildings to make sure they are not trespassing on the rights of land and business owners who would prefer they not carry weapons on the property. On the other hand, those who would do harm to others could care less what is written on those signs

The NC Court of Appeals explained the right to bear arms away by sleight-of-hand in its opinion at App. A-5, wherein they answer the question "Can our right be regulated?" with "It depends."

Having said these things, let's look specifically at the burdensome statute under which I was charged for bearing arms in a courthouse, NCGS 14-269.4. (See App. D-7). Not only does this statute violate the Second Amendment on its face, the State Court of Appeals takes this denial of right one giant leap further, assuming the prohibition extends to "any state property". (See App. A-8)

As if to add insult to injury, the State has further "infringed" on the right to bear arms by passing the "Emergency Powers Gun Law" shortly after the riots following the King assassination. NCGS 14-288-7 (App. D-5) bans "the right to keep and bear arms" during "declared emergencies".

Many argue that we have been under a continuous "state of emergency since at least 1933 and perhaps as long ago as 1861. It is a certainty that Mr. Obama has recently extended for another year the state of emergency initiated by Pres. Bush for the World Trade Center event. Under its current laws, NC can confiscate all weapons from its citizens at will, an obvious violation of not only the Second Amendment, but also Article I, Section 30, of the North Carolina Constitution (Supra, p. 4).

Where will it stop? To paraphrase an old saying, "The power to regulate is the power to destroy." It is up to this Court to take the next step and absolutely end any confusion about the

right to bear arms: It shall not be infringed, regulated, violated or otherwise restricted without due process of law and for just cause, individually and not en masse. When I was arrested, put in handcuffs and jailed, I was peaceably exercising my right to bear arms. I was, and am, not a member of the classes of persons considered too "dangerous" to possess firearms as listed in arguably unconstitutional 18 U.S.C. § 922. I am a retired military veteran with 23 years of honorable service. Yet, I was thrown in jail for exercising a constitutionally protected right.

I ask this Court declare the following by sustaining the 2nd Amendment:

. Gun ownership shall not require licensing.
. Gun purchases shall not require permits. (Free men do not ask permission to bear arms)
. The right to keep and bear arms shall not be infringed. (All laws which infringe on "the right to keep and bear arms" are presumptively unconstitutional including, but not limited to, NCGS 14-269, *et seq.*, NCGS 14-288-7 and the last sentence of Article I, Section 30 (See p. 5, *supra*), of the North Carolina Constitution regulating "concealed weapons", unless and until the Second Amendment is repealed.)

There is adequate support in precedent landmark rulings of this Court to justify the above conclusions. I provide samples below:

"The claim and exercise of a constitutional right cannot be converted into a crime. *Miller v. U.S.* 230 F 486 at 489"; and *Norton vs. Shelby County* 118 U.S. 425.

"Where rights as secured by the Constitution are involved, there can be no rule making or legislation which will abrogate them. *Miranda v. Arizona*, 384 U.S. 436 at 491 (1966)."

"All laws, rules and practices which are repugnant to the Constitution are null and void. *Marbury v. Madison*, 5th US (2 Cranch) 137, 180"

"If the exercise of a constitutional right can become the cause for imprisonment, the constitution has been nullified and there is no security from omnipotent government; the constitution has become a worthless scrap of paper." *Marchetti v US*, 390 US 39, 57 (1968).

"[A law that] impinges upon a fundamental right explicitly or implicitly secured by the constitution is presumptively unconstitutional." *Mobile v Bolden*, 446 US 55, 76 (1980); *Harris v McRae*, 448 US 297,312 (1980).

Finally, on the subject of the constitutionality of any restriction on "the right to keep and bear arms", I submit the following wisdom from the "Right to Keep and Bear Arms - Report of the

Subcommittee on the Judiciary, United States Senate, Ninety-Seventh Congress, February 1982":

"The prohibition is general. No clause in the Constitution could by a rule of construction be conceived to give to Congress a power to disarm the people. **Such a flagitious attempt could only be made under some general pretense by a state legislature.** But if in blind pursuit of inordinate power, either should attempt it, this amendment may be appealed to as a restraint on both." (Emphasis mine) William Rawle, A View of the Constitution 125-6 (2d ed., Philadelphia, 1803).

The Report concludes with the following statement:

"The conclusion is thus inescapable that the history, concept, and wording of the second amendment to the Constitution of the United States, as well as its interpretation by every major commentator and court in the first half-century after its ratification, indicates that what is protected is an individual right of a private citizen to own and carry firearms in a peaceful manner."

And quoting further from case cites in the "Report":

"*State v. Kerner*, 181 N.C. 574, 107 S.E. 222, at 224 (1921), 'We are of the opinion, however, that

'pistol' *ex vi termini* is properly included within the word 'arms,' and that the right to bear such arms cannot be infringed... "

Bliss v. Commonwealth, 12 Ky. (2 Litt.) 90, at 92, and 93, 13 Am. Dec. 251 (1822), 'But it should not be forgotten, that it is not only a part of the right that is secured by the constitution; it is the right entire and complete, as it existed at the adoption of the constitution; and if any portion of that right be impaired, immaterial how small the part may be, and immaterial the order of time at which it be done, it is equally forbidden by the constitution." (Emphasis added)

As Thomas Jefferson reminded us, "To preserve liberty, it is essential that the whole body of the people **always** possess arms and be taught alike..." (Emphasis mine) They had it right in 1982. It's time for this Court to catch up.

II.

The court below disregarded my arguments that it lacked jurisdiction due to my not receiving or anticipating receiving any benefit from the United States proving my status as a "US Person"; there being no evidence that I receive or anticipate receiving any benefit from State which would subject my rights to State jurisdiction (See *Wickard, supra*); there being no waiver of my right to bear arms by any threat or action on my part; the subject charges having been filed

in the wrong name, as discussed *supra*; there being no evidence I had entered into any agreement, contract, or quasi-contract with the State which obligated me to it; there being no injured party; and, original jurisdiction being constitutionally vested in the "supreme Court" of the United States (Art. III, Sec. 2).

The State offered no proof of jurisdiction, merely assuming same, a violation of due process since jurisdiction, once challenged by a party, must be proven. It cannot be assumed. Title 5 USC §556(d) states as follows: "When jurisdiction is challenged the burden of proof is on the government." And,

"No sanction can be imposed absent proof of jurisdiction." *Stanard v. Olesen*, 74 S. Ct. 768

"Once challenged, jurisdiction cannot be 'assumed', it must be proved to exist!" *Stuck v. Medical Examiners,* 94 Ca2d 751. 211 P2s 389; *Maine v. Thiboutot,* 100 S. Ct. 2502

"There is no discretion to ignore that lack of jurisdiction." *Joyce v. US*, 474 F2d 215.

There was no ratification of commencement and no "real party in interest" in this matter to provide jurisdiction of the courts below.

"Rule 17(a) [F. R. of Civ. P.] - Real Parties in Interest: "Every action shall be prosecuted in the name of the real party in interest..."

While this is a Civil Rule and the instant matter is "criminal", according to the civil rules of procedure, Rule 1, there can be only one form of action, a civil action. This is important because 1) All crimes are commercial, (27 CFR 72.11) and 2) Every alleged crime has to have "nature and cause". It must be prosecuted in the name of the "People of the State" as a "real party in interest", not as the "PEOPLE OF THE STATE OF", or as in the instant matter, "THE STATE". Those titles denote corporations; and such controversy is an impossibility, as an artificial entity cannot exercise authority over a natural, flesh-and-blood man without his consent or by his waiver of such immunity. (See *Hale v Henkel, supra*)

In this instant matter, there is no injury, or injured party; so there is no crime and, thus, no jurisdiction, or standing to proceed without any ratification of commencement.

"If a party is found to lack standing, the court is without subject matter jurisdiction to determine the cause. A court lacks discretion to consider the merits of a case over which it is without jurisdiction." *Miss. So. v Board of Pardons & Paroles*, 896 A2d 809, 812 (Conn. 2006).

No evidence showed a willful and voluntary contractual relationship between me and the State which would grant any jurisdiction whatsoever over my person or my property in

this matter. There can be no doubt that the presence of a contractual relationship is necessary for the corporate State to exercise jurisdiction over me. This fact of law is no better illustrated than by the "CLEARFIELD TRUST DOCTRINE" from *Clearfield Trust Co. v. United States*, 318 U.S. 363 (See App. F-1).

Stated simply, *Clearfield* showed that, when private commercial paper, i.e., Federal Reserve Notes, is used by corporate government, then Government loses its sovereignty status. As such, government then becomes bound by the rules and laws that govern private citizens, meaning that if it intends to compel an individual to some specific performance based upon its corporate statutes or rules, such as regulation of the right to bear arms, then the government, like any private citizen, must be the *holder in due course* of a contract or other commercial agreement between it and the one upon whom demands for specific performance are made. The government must be willing to enter the contract into evidence before trying to get to the court to enforce its demands, or "statutes".

Where a contractual relationship exists between the State and the individual, there also lays jurisdiction, although limited based upon the terms. However, where no contract exists, there is no jurisdiction. "Party cannot be bound by contract that he has not made or authorized." *Alexander v. Bosworth* (1915), 26 C.A. 589, 599,

147 P.607. Therefore, "Failure to reveal the material facts of a license or any agreement is immediate grounds for estoppel." *Lo Bue v. Porazzo* 48 Cal.App.2d 82, 119, p.2d 346, 348.

Thus, the theory of "presumed" quasi-contracts that allegedly bind us with STATE agency is void for fraud *ab initio*, since the *de facto* State cannot produce the material fact (consideration inducement) or the jurisdictional clause (who is subject to said statute). (SEE: Master/Servant Relationship-C.J.S.-"Private, Liberty").

Since "consideration" is the "life blood" of any agreement or quasi agreement (contract), ". . . absence of such from the record is a major manifestation of want of jurisdiction since without evidence of consideration there can be no presumption of even a quasi-contractus. Such is the importance of a "consideration." *Reading R.R. Co. v. Johnson,*7 W & S (Pa.) 317. So, without valid, voluntary, fully informed, willing participation in an agreement/contract or consideration, there is no government jurisdiction as the "property" (in this case, me) does not "reside" in the colorable fictitious territory occupied by State authority. There is a right to contract and a right not to contract. I have chosen not to contract with the State. Therefore, no jurisdiction is granted.

Unless an entity has become a part of the corporation (State of NC) by voluntarily of his own free will accepting a license (contract) and being subject to it, no corporate policy (statute) has any authority against that entity, save with actions of that entity against the sacred rights of others so possessed. State had no contractual basis for jurisdiction over me, and the record shows that none was produced during the trial. My sidearm was not registered, as admitted by the prosecutor on the record; and I obtained no permit to purchase it.

If one has not voluntarily of his own free will "availed" himself of any benefit from, or is not in, or of, any office of government and subject to the administrative laws of said corporate government, then he is a private citizen and a part of the private sector, not under statutory jurisdiction. At all times relevant to my arrest, I was a "private" citizen and not a "corporate" citizen under jurisdiction (See *Hale v. Henkel, supra*).

The argument, although not made by the State but implied, that merely being a resident of the State grants jurisdiction, has been discarded by this Court many times. (See *Browne v. Keene*, 33 US 112 (1834) at App. F-4.)

The Constitution of the United States of America, in Article III, Section 2, Cl. 2, states, "In ***all*** cases...in which a State shall be a Party, the Supreme Court shall have original

Jurisdiction." In this instant matter before the court, the State is the complaining party. Had I committed a common law "crime" against the People of North Carolina, and the People were the Plaintiffs, then said Article III, Section 2, might not apply to this instant matter. However, while I have committed no such "crime" against the People by my exercise of my constitutionally guaranteed right to bear arms, the corporate State rather than the sovereign State, under its understanding of the equity contract to which it is bound as a corporate fiction of law, has seen fit to attempt to sue directly this free, natural, flesh-and-blood citizen. However, Art. 1, Sec. 5, of the NC Constitution binds it to the chains of the US Constitution (See p. 5, *supra*),

The NC Court of Appeals in *State v. Sullivan*, File #09-705 cited *Georgia v. Pennsylvania R. Co.*, 324 U.S. 439, 446, 89 L. Ed. 1051, 1056 (1945), to show federal jurisdiction only in 'civil suits' (See App. F-5). Here, *Georgia* was quoting from *Wisconsin v. Pelican Ins. Co.*, 127 U.S. 265 (1888). *Wisconsin* says,

"By the Judiciary Act of September 24, 1789, c. 20, § 13, it was enacted that: 'The supreme court shall have exclusive jurisdiction of controversies of a civil nature where a state is a party...'", 1 Stat. 80."

However, the language of the Constitution is extremely clear: "In **all** cases...". "To disregard such a deliberate choice of words and their

natural meaning, would be a departure from the first principle of Constitutional interpretation." *Wright v. US* 302 US 583 (1938) (See App. F-6)

As Judge Liddle opined in *Wuebker v. Bowles*, 58 N.Y.S.2d 671 (1944) ""Only the Constitution and laws made in pursuance (not in violation) thereof are declared to be the supreme law of the land. Decisions of the Court are not included as any part of the supreme law of the land. That court may support the Constitution, as its oath requires, or it may fail to do so, but it cannot change it. Under Article VI, only the Constitution and the laws made pursuant to it are binding on this court."

Simply put, no matter how many times an unconstitutional act or opinion is quoted, it remains unconstitutional. The Judiciary Act of September 24, 1789, is not issued pursuant to the Constituton. It is void. Rulings of the courts subsequent to that Act are also invalid. Neither the legislative branch nor the judicial branch may amend the Constitution. This Court can't do it! Only the people can. (See also *University of North Carolina vs. Foy, supra*)

The attempt by this Court, aided by the Congress, to reduce its docket by limiting Art. II, Sec. 2, to only "civil" cases is duplicitous and in contravention to the very words of the

Constitution. In any event, as stated *supra*, all cases are civil. I ask this Court to reconsider its opinion on Article III, Section 2. Upon information and belief, State jurisdiction does not exist in this matter.

III.

I was denied a "willfulness" defense. The court repeatedly denied me the presentation of mitigating and constitutional arguments regarding the right to bear arms to the jury. The constitutional protection of the Second Amendment was not allowed to be cited or even mentioned to the jury. The Constitution was stripped from the discussion by the court. The "right to keep and bear arms" was conspicuous by its absence from the process.

When the trial court charged the jury, there was no pretense at protecting the rights of the individual on trial. The only protection was granted to the State and its "inviolable" corporate law. Any reasonable presentation of individual rights as guaranteed by the law was not allowed. No attempt to provide the jury with a clear picture of what their options were was allowed. It was not a question with the court of the jurors' authority to rule on the facts and the law, aka "jury nullification"; it was a question of "Can we trust the jury with all the facts to make the 'right' decision?" By failing to acquaint the

jury, or to allow me to acquaint them, with the full definition of "willfulness" and the full impact of the constitutional protections given our right to bear arms, the lower court did a disservice to justice and committed reversible error.

My Notice of Filing of Evidence (which included the State and federal Constitutions, the "Senate Subcommittee Report on the Right to Bear Arms", *supra*, etc.) was timely filed and entered into the record for trial. The court refused to allow filing of any evidence into the record. Thus, the record was sealed by the lower court on this evidence, and none of it was allowed during the trial. (T. p. 37, 38).

Subsequently, the court addressed the jury as follows on these matters:

"THE COURT: Yeah, I don't want to get too much into this law business because it's not going to be any instruction I'm going to give on that. Let me just say this to all the panel as a whole. The Court has the job of instructing you on the law in the case. Will all of you accept and follow the law as I instruct you at the appropriate time in this case?" (T. p. 68). This question came up repeatedly in the State's arguments. The fix was in.

After this explanation, the evidence I had filed and the Constitution were not allowed in that courtroom. It is a violation of protocol and of our sworn oaths not to support the Constitutions or allow them to be heard. To conceal the

Constitution from a jury, and to conceal a report by a U. S. Senate subcommittee on the core subject of the trial smacks of subterfuge and coercion. The true gravity of this situation was exposed later in the proceedings when the court refused to allow me to mention the right to bear arms, the 2nd Amendment or the Constitutions. (T. p. 112)

For the rest of the trial, this condemnation of the Constitutions continued (T. p. 112-117). During my testimony, I tried to enter into evidence Article I, Section 30 of the NC Constitution, from the "Notice of Filing of Evidence", but was denied (T. p. 240). Then, when I tried to mention the right of "self-protection and personal security", that was also denied by the court (T. p. 241). These interruptions continued for the remainder of the trial (T. p. 245-246, 251, 256), but the most glaring example of wanton disregard for the authority of the Constitution was when the judge threatened the jury as they were about to leave on a lunch break with, "**I don't want you going to the public library and opening up and studying the Constitution during your lunch break. That would be improper because it's not evidence in the case.**" (T. p. 261) Never have I heard such blatant treason against the Constitution and the oath of the court, this in a courtroom to an empanelled jury. The actions of the court in denying the introduction of evidence, in restricting my testimony with regards to the

underlying constitutional motives for my actions, and the blatant admonition to the jury against their even seeing a copy of the Constitution constitute plain, reversible error, demonstrate a direct violation by this judge to his sworn oath to the Constitution and bring dishonor to the judicial system in its entirety.

IV.

Quoting from "Without Intent" (App. C-1), "A core principle of the American system of justice is that individuals should not be subjected to criminal prosecution and conviction unless they intentionally engage in inherently wrongful conduct or conduct that they know to be unlawful. Only in such circumstances is a person truly blameworthy and thus deserving of criminal punishment. "The Supreme Court has described this principle as being 'as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil.'" (App. C-1)

As stated *supra*, the charge set by the County Magistrate against me was, "unlawfully and willfully did possess and/or conceal a deadly sidearm...in the Pender County courthouse...". Yet, I was not allowed to argue willfulness to the jury.

The courts below denied me the right of due process guaranteed by the Fifth and Fourteenth

Amendments by failing to recognize that improper notice of violation of law was provided me that openly bearing arms in the courthouse was illegal, regardless of whether or not the law contained any *mens rea*. There was no provable intent on my part to break the law. Doing so was clearly not in my agenda, given that I had discussed this specific issue with the County Sheriff prior to my arrest (T. p. 163).

Jury instructions erroneously failed to inform the jury that the notice on the doors of the Pender County Courthouse required "concealment" for my actions to be a violation of law. The trial court failed to instruct the jury as to the applicable law noticed on the signage and decals located on the doors of the Pender County Courthouse, none of which made any reference to the open carrying of arms. The signage was misleading and served to entrap me into unknowingly violating the statute, which is supported by the record.

The jury's instructions did not include the expansive words "intelligently" and "knowingly" thus stifling their ability "to properly evaluate and protect the rights of the individual on trial". For the court to restrict the definition to "voluntarily and intentionally" (T. p. 288) presents an incomplete understanding of the "willfulness" defense and tailors the instructions toward the arguments of the State.

The court below twice denied my demand for a directed verdict due to there being no evidence of willfulness. I also demanded the court declare a mistrial due to my being denied a willfulness defense: Denied. (T. p. 291-294)

When I presented this Court's opinion on "statutory willfulness" from *Cheek v. United States*, 498 U.S. 192 (See App. F-11), the court responded (T. p. 28), "I don't know that case and that ruling...I'm not seeing in our general statutes here that willfulness or even intent is an element of the crime that the State has to prove beyond a reasonable doubt and in my instructions by looking at this, I will not give that." The court added, further, "...[T]hese legal arguments that we have heard this morning that are in the record, they are not legal arguments that either party is going to present to the jury." (T. p. 37).

The court further biased the jury by stating clearly to them, "Let me just say, ladies and gentlemen, as a general principle, and you may hear this again in the instruction, that ignorance of the law is no excuse when it comes to a criminal violation" (T. p. 196). Then, during my testimony, the "willfulness defense" was consistently denied.

By contrast we find in *Young*, 140 N.C. App. at 12, 535 S.E.2d at 386, "[A]lthough ignorance of the law is no excuse, and the statute at issue does not require the State to prove intent, due

process requires that defendant have knowledge, actual or constructive, of the statutory requirements before he can be charged with its violation".

"Willfully" – Black's Law Dictionary, Eighth Edition – "It implies that the act is done knowingly and of stubborn purpose, but not with malice; *Miller v. State* (Okl.) 130 Pac. 813, 2 S. E. 68; and in penal statutes, it means with evil intent, or with legal malice; *Galvin v. Mill Co.*98 Cal. 268, 33 Pac. 93...A willful act is one that is done knowingly and purposely...; *Hazle v. So. Pac. Co.*, 173 Fed. 431."

Intent is a mental attitude rarely provable by direct evidence, but ordinarily must be shown by circumstances from which it may be inferred. *State v. Bell*, 285 NC 746, 208 SE2d 506 (1974). "[T]here must be not only a wrongful act, but a criminal intention." *Morissette v. United States,* 342 U.S. 274, 96 L. Ed. at 306.

The signage on the doors was part and parcel of my strategy of defense. My entry into the Pender County Courthouse without a concealed weapon showed my mental attitude and my intent, which was not to violate the posted signage.

It is worthy of note that, since my trial, the sheriff's department has caused new signage to

be added to the entrance doors of the courthouse which state, "No weapons allowed".

V.

The confiscation of my private property sidearm by the trial court, as affirmed by the Court of Appeals, denied me my right to private property in violation of Article 1, Section 1, of the NC Constitution, and the 5th and 14th Amendments to the US Constitution. My private property weapon was confiscated and scheduled for destruction pursuant to NCGS 14-269.1 (See App. D-7) by the Superior court, and the Court of Appeals affirmed. The statute clearly states that confiscation is required only when the weapon is used in the commission of a crime. My sidearm never left its holster and was not "used" to threaten anyone in any way. The taking of my sidearm denied me my right to keep and bear arms for personal protection and self-defense.

It is unreasonable, arbitrary and capricious to deprive me of my property by court order with there having been no provocation other than the perceived violation of a benign corporate statute, and where witness testimony confirms no threat or act of violence occurred. No one, by their own testimony, felt threatened at any time. No indictments against me sought forfeiture of any property.

Further, the ordered destruction of my sidearm would seem to raise serious Fifth Amendment Takings issues. Firearms subject to neither lawful forfeiture nor confiscation as contraband remain valuable tangible personal property belonging to the convicted individual. I doubt the government's authority to simply confiscate and destroy such valuable property without first affording due process and payment of just compensation. In *Cooper v. City of Greenwood*, 904 F.2d 302 (5th Cir.1990) the Fifth Circuit recognized that even one convicted of illegally possessing firearms does not lose his or her property interest in the firearms by virtue of the conviction alone. I reject the idea that a property interest can simply be taken by the government without affording the property owner due process of law and just compensation.

VI.

The trial court was not properly set. The oath given by the clerk to the jury was improper and in violation of law. The importance of a proper oath cannot be overstated. The best illustration was the oath given to Barack Obama on January 20th of this year by the Chief Justice of this Court. When Chief Justice Roberts realized he may have omitted a part of the constitutional oath during the inauguration, he immediately rounded up Mr. Obama and gave him the oath a second time, just to make sure. Are we to be less conscientious with our court officers?

Our Constitutions are the will of the People clearly set down for their agents, elected and appointed, to follow. No law, statutory or otherwise, supercedes these Constitutions, and only those laws passed in "pursuance" of them may stand. The People commanded in Art. VI, Cl. 3 (See P. 4, *supra*), that all state and federal judicial officers be properly sworn. Pursuant to this constitutional directive, the Congress passed the Act of Congress of June 1, 1789, 1 Story's L. U. S. p. 1, to regulate the time and manner of administering this oath. (See App. D-1)

Upon information and belief, judges, attorneys, clerks, juries, etc., are referred to as "officers of the court" and are required to take the oath mentioned above and support the Constitution as it is written. To accomplish this federal mandate, Article VI, Section 7, NC Constitution, states very plainly that all officers of the State shall take said oath. (See p. 5, *supra*)

NCGS 11-11, "Oaths of sundry persons: Forms", requires petit jurors to swear or affirm this same oath in addition to a more specific oath pertinent to their assignment. (See App. D-3)

However, the Oath to the Petit Jurors given at this trial omitted the constitutional oath and was solely that provided in the Manual of the Administrative Office of the Court and pursuant to the apparently unconstitutional NCGS 9-14

(See App. D-2), as follows:

"Place your left hand on the bible and raise your right hand. You and each of you solemnly swear that you will truthfully and without prejudice or partiality try all issues in Criminal actions which come before you during this session of Court and true verdicts render according to the evidence offered therein, so help you God."

It would appear from a cursory reading of NCGS 11-11 that this oath, taken by State's juries, **misstates and omits** very important areas of a proper oath for officers of the courts of this State. The court below completely ignored the inclusion of the constitutional and statutory oaths, allowing it to cavalierly dispense with the Constitution entirely. Thus, the jurors of the courts have not had proper authority to occupy said offices. They are "*de facto*" jurors and not "*de jure*". If we are, in fact, "a nation of laws" and "bound by the statutes", then those laws must apply, as written, to all within the jurisdiction of those laws, including and especially all agents of the State, and especially "Jurors". It would appear that, absent a valid oath, the office of "juror" was vacant at my trial.

To illustrate, I refer this Court to the NY State Bar Journal for March/April 1997, "Public

Officers, Beware! No Excuses Accepted" (See App. E) where Mann describes absolutely the necessity in law for proper and timely oaths to be administered to officers of the state. There can be no exceptions. While the article speaks to NYPL 30(1)(h), the same analogy applies to NCGS 11-11, *supra.*

Further, NCGS 128-5, "Oath required before acting", establishes the penalty for failure to take an oath of office, and NCGS 128-6, "Persons admitted to office deemed to hold lawfully", defines the process for removing said "officeholder". (See App. D-6)

This court must take judicial notice that Title 18, Ch. 43 Sec. 912, takes this type of offense very seriously, "ignorance of the law being no excuse". (See App. D-1)

VII.

Did the courts below act in violation of my 5th Amendment right to counsel of choice when I was denied access to a lay person, not a licensed attorney, to assist and counsel me?

This Court has ruled in *Argersigner v. Hamlin, Sheriff* 407 U.S. 425 (1972) that, unless litigants are assisted by counsel of their choice during judicial proceedings, or knowingly waive that right, jurisdiction of the court over that person is denied entirely. Further, the failure of the State, judge or prosecutor to recognize the

right to counsel denies the court any jurisdiction to hear the matter. (See *Johnson v. Zerbst*, 304 U.S. 458, 462-463).

There are a litany of federal and state rulings which support the right to counsel and the right to counsel of choice, be he layperson or not. A few samples follow:

Sims v. Aherns, 271 S.W. 720 (1925) - "The practice of law is an occupation of common right."

Schware v. Board of Examiners, United States Reports, 353 U.S. 238, 239 - "The practice of law can not be licensed by any state/State."

Chandler v. Fretag, 348 US 3 (1954), "An accused must be allowed to employ counsel of his own choosing...his right to be heard through his own counsel is unqualified. This 'right to counsel' is very precious and must not be arbitrarily denied without a hearing."

(Also see *Commissioner of Corrections, et al*, 393 US 483, 490; *Powell v. Alabama*, 287 U.S. 45, 1932; *US v. Tarlowski*, 305 F.Supp. 112, 1969; and, *Brotherhood of Railroad Trainmen v. Virginia ex rel. Virginia State Bar*, 377 US 1,6, in App. F-7,8)

As held in *US v. Mitchell*, 246 F. Supp., 874, 877 (1965), referring to the *United Mine Workers v. Illinois Bar Ass'n, supra, NAACP v. Button,* 371 US at 429, and *Brotherhood of Railroad Trainmen v. Virginia State Bar*, 377 US 1, a State

may not pass statutes prohibiting the unauthorized practice of law or to interfere with the right of freedom of speech secured in the 1st Amendment. I am entitled to the equal protection of laws and that includes my right to speak through whomever I please, when I please. "The constitutional right of assistance of counsel is too precious for such degenerate subversion." (P. 979).

We find in *Wright v. US, supra,* the words chosen by the Founders for the Constitution were not selected idly. Thus, the key to the argument may be found in the word "counsel" used in the 5th Amendment.

COUNSEL - Bouvier's Law Dictionary, 1914 "The counsellors [sic] who are associated in the management of a particular cause, or who act as legal advisers in reference to any matter requiring legal knowledge and judgment."

If the men who framed the Bill of Rights meant by "Counsel" a licensed attorney, they would have said, "licensed attorney". Presidents; Governors; Federal judges; Congressmen; Legislators; and Magistrates do not have to be attorneys. A litigant may even represent himself in court without being an attorney. It follows logically that the "Counsel" established by the Constitution and mentioned in the Rules of Civil Procedure also do not necessarily need be an attorney.

Thus, regardless of North Carolina's statutes, habits, culture or any arbitrary rulemaking by a judge, my 5th Amendment right to counsel of choice cannot be invalidated. The State's pretended right to regulate the practice of law must fall or recede when put alongside my right to counsel of choice, be he "licensed" or not. I have a right to be foolish or wise when it comes to my own defense. It's called freedom of choice. Anything else is the result of prejudicial action by the courts below to enhance the legal "profession" and its ill-gotten gains. It is tyranny!

VIII.

The reason for the adoption of NCGS 14-269-4 was to protect the courts' judicial officers (and, if we believe the North Carolina Court of Appeals, all government property and employees) and customers from the actions of a very small minority of citizens and non-citizens who may bring weapons into the building to do harm to others. In the first place, anyone who wants to bring a weapon into any building to do harm to others will do it whether there is a law to the contrary or not. In the second place, to solve this problem caused by a small minority, the legislature passed a law to affect 100% of the people who could fall within the classification of being "lawful subjects of State legislation", that is, anyone who is, or may be assumed to be, under the jurisdiction of the State.

This means that, because the possibility exists that a very small part of the population might do something harmful using a "lethal weapon", all of us are burdened with preemptive legislation. In point of fact, anyone who wants a "lethal weapon" can take one from any of the armed government agents parading around these government buildings, including airport terminals. All others become unarmed "targets".

Via the 14th Amendment, the States are prohibited from denying equal protection in their legislative enactments. Similarly, there is an "equal protection component" embodied within the Due Process Clause of the 5th Amendment. See *Bolling v Sharpe*, 347 U.S. 497, 499, 74 S.Ct. 693 (1954), *et al.*

Equal protection deals with legislative reasons for creating categories where a law applies to one class but not another. Principles of equal protection fall into two categories: "under-inclusive" and "over-inclusive".

If a legislative body attempts to address a particular problem, it must focus only on the class creating that problem. If in doing so the legislative body encompasses less people than necessary, an "under-inclusive" classification is created; if more, then it's "over-inclusive". Either case violates equal protection.

Examples of "under-inclusive" cases for equal protection analysis: A commercial fishing law

that applied to one group of fishermen but not another was found violative of equal protection in *Isakson v. Rickey*, 550 P.2d 359 (Alaska 1976); in *French v. Amalgamated Local Union 376*, 203 Conn. 624, 526 A.2d 861 (1987), a ban on residential picketing except for unions was held to violate equal protection.

By contrast, in *Brown v. Merlo,* 8 Cal.3d 855, 506 P.2d 212, 227 (1973) the statute was over-inclusive because it "imposes a burden upon a wider range of individuals than are included in the class of those tainted with the mischief at which the law aims."

In reference to the corporate policy called "Weapons on State property and in courthouses" law, the problem is caused by that part of our population that commits offenses against another's life, liberty or property in the stated environment; but the law applies to all "lawful subjects", including those who do not commit such offenses. Laws must be written only to punish for said offenses those who commit them, not to preemptively punish the entire population. Including everybody else beyond the offenders in the statute violates not only everyone's right to bear arms, but also the principle of equal protection by creating an unconstitutionally overbroad classification.

In its opinion, the NC Court of Appeals states no compelling State interest justifying violation

of equal protection, due process and the right to bear arms, apparently assuming that it falls under the State "police power". (See *Hendrick v. Maryland*, 235 U.S. 610, 622 (1915), "an exercise of the police power uniformly recognized as belonging to the States and essential to the preservation of the health, safety and comfort of their citizens[.]") Unfortunately for State, I would argue that said police power does not extend to the infringement on the right to bear arms protected by the Second Amendment, it being true that one part of the Constitution cannot be in contravention to another.

As this Court has stated:

"If a law has 'no other purpose . . . than to chill the assertion of constitutional rights by penalizing those who choose to exercise them, then it['s] patently unconstitutional." *United States v. Jackson,* 390 U. S. 570, 581 (1968)." *Id.,* at 631.

Yet, as I stated, *supra*, our ignorance of the law and our rights gets the best of us (See *US v. Johnson*, supra, App. F).

So, what grants the State "police power" over my "right to keep and bear arms"? The answer is, "There is no such grant." Thus, I do not require State's permission to own and carry my personal sidearm for the defense of myself and

others. NCGS 14-269.4 is preemptive and over-inclusive rather than being reactive and targeting a specific threat.

REASONS FOR GRANTING THE PETITION

North Carolina law enforcement and the courts below have failed to recognize my "right to keep and bear arms". Because there exists a constitutional question of great interest and benefit to the People at large in all the several united States and the Territories, it is incumbent upon this Supreme Court to exercise its review authority to, once and for all, settle this long-running dispute, clearly and precisely, such that there can be no further argument.

The lower courts have erroneously convicted me, or denied my appeal of said convictions, of statutory violations which unconstitutionally burden and restrict the exercise of my right to keep and bear arms and my right to property, thereby denying me my federally protected, constitutional and civil rights.

The courts below have decided the burning question of my right to keep and bear arms in a way that is in conflict with recent relevant decisions by this Supreme Court that appear to have settled the matter somewhat, but need to be fine-tuned to eliminate any confusion in the future.

CONCLUSION

I come before this Honorable Court claiming all the rights to which I am entitled as a natural man, created by God, claiming all those natural and civil rights guaranteed by the Constitution and seeking 1st Amendment redress of those grievances outlined herein:

Whereas, the people retained the right to bear arms, un-infringed, in the 2nd Amendment, and only the people can take it away by amending or repealing said amendment;

Whereas, NCGS 14-269.4 has been shown to be in violation of 2nd, 5th and 14th Articles of Amendment and unconstitutional;

Whereas, no jurisdiction has been proven over me by the courts below;

Whereas, the trial court treasonously abused its discretion by prohibiting the Constitution from the trial;

Whereas, the trial court violated my 5th and 14th Amendment right to due process by preventing a "willfulness" defense;

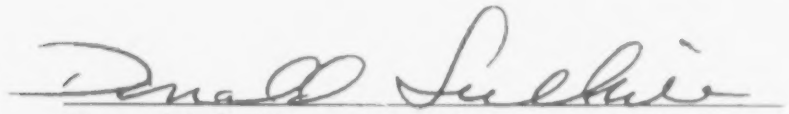
Whereas, the trial court denied my 5th Amendment right to property;

Whereas, the trial court was improperly set, the jury having been improperly sworn; and,

Whereas, I was denied my unqualified right to counsel of the 6th Amendment;

Therefore, the merits of my case should be reviewed by this Court; the ruling of the courts below should be reversed; the criminal charges against me should be dismissed; and/or the Petition for a writ of certiorari should be granted.

Respectfully submitted this the 29th day of November, 2010, by:



Donald Sullivan, Petitioner, Sui Juris
Lt. Colonel USAFR(R)
c/o General Post
Atkinson, NC [28421]
WITHOUT PREJUDICE [UCC1-308]

APPENDIX A

NO. C0A09-526

NORTH CAROLINA COURT OF APPEALS

Filed: 16 February 2010

STATE OF NORTH CAROLINA

v.

Pender County
No. 08 CRS
050921

DONALD SULLIVAN,
Defendant.

Appeal by defendant from judgment entered 19 November 2008 by Judge Jay D. Hockenbury in Pender County Superior Court. Heard in the Court of Appeals 30 November 2009.

Roy Cooper, Attorney General, by Robert C. Montgomery, Special Deputy Attorney General, for the State.

Donald Sullivan, pro Se, defendant-appellant.

MARTIN, Chief Judge.

Defendant Donald Sullivan appeals from a judgment entered upon his conviction by a jury of possessing a deadly weapon in a courthouse in violation of N.C.G.S. §14-269.4. We find no error.

On 13 May 2008, Cathy Dixon, a deputy clerk in Pender County, was in her office on the first floor

of the main courthouse building when she saw defendant in the bookkeeping office across the hall and observed that he was wearing a gun. Ms. Dixon immediately contacted a bailiff to report her observations. Deputy Sheriff Hugh T. Frazier, who was on duty as a bailiff in Courtroom 2 in the main courthouse building, responded to the call. Since there were only two bailiffs on duty in the main courthouse, Deputy Sheriff Frazier notified his supervisor, Captain Kevin Kemp of the Pender County Sheriff's Office, that he needed to leave his post in the courtroom "to see what the situation was." When he arrived at the bookkeeping office, Deputy Sheriff Frazier found defendant in conversation with Rebecca Carroll, the Clerk of Pender County Superior Court, and Joy R. James, the bookkeeper for the Pender County Clerk of Court, and observed that defendant "had a semiautomatic on his hip." Deputy Sheriff Frazier approached defendant and advised him that it was against the law for defendant to be wearing a gun in the courthouse, and "asked him to please stand up and remove the gun from his holster." Defendant complied with the deputy sheriff's request. Defendant also "dropped the clip" out of the weapon and removed a round from the chamber at the deputy sheriff's further direction. Deputy Sheriff Frazier then took control of the semiautomatic nine-millimeter Glock 26 and noted that the weapon did not have a manual safety. Shortly thereafter, Captain

Kemp arrived at the courthouse and proceeded to the bookkeeping office, where he arrested defendant and seized the nine-millimeter Glock 26, the full magazine clip, and the single round that had been removed from the chamber of defendant's weapon.

On 13 May 2008, defendant was charged with possessing a deadly weapon in a courthouse in violation of N.C.G.S. §14-269.4. After defendant was found guilty by the Pender County District Court on 13 August 2008, defendant gave notice of appeal to the superior court. Following a two-day trial beginning 18 November 2008, a jury found defendant guilty of violating N.C.G.S. §14-269.4. The Pender County Superior Court entered a judgment imposing a suspended sentence of forty-five days imprisonment and twelve months of unsupervised probation, and ordered defendant to pay a $500 fine and court costs. As a condition of his probation, defendant was ordered to turn over his semiautomatic nine-millimeter Glock 26 to the sheriff's department "to either be destroyed or used for educational purposes in their discretion." Defendant gave oral notice of appeal.

The record on appeal contains seventeen assignments of error. Those assignments of error in support of which defendant failed to present argument or cite relevant authority in his main

brief are not discussed below and are deemed abandoned. See N.C.R. App. p. 28(b)(6) (amended Oct. 1, 2009) ("Assignments of error not set out in the appellant's brief, or in support of which no reason or argument is stated or authority cited, will be taken as abandoned."); see also *Hardin v. KCS Int'l, Inc.*, N.C. App., 682 S.E.2d 726, 740 (2009)2d 726, 740 (2009) (concluding that an appellant who failed to present argument in support of an issue in his main brief and, instead, did so only in his reply brief, failed to properly present the issue for appellate review (citing *Oates v. N.C. Dep't of Corr.*, 114 N.C. App. 597, 600, 442 S.E.2d 542, 544 (1994); *Golden Rule Ins. Co. v. Long*, 113 N.C. App. 187, 199, 439 S.E.2d 599, 606, appeal dismissed and disc. review denied, 335 N.C. 555, 439 S.E.2d 145 (1993); *Animal Prot. Soc'y of Durham, Inc. v. North Carolina*, 95 N.C. App. 258, 269, 382 S.E.2d 801, 808 (1989))).

I.

Defendant first asserts that N.C.G.S. 14-269.4, as applied to him, is an unconstitutional violation of his right to bear arms under Article I, Section 30, of the North Carolina Constitution. For the reasons stated, we overrule this assignment of error.

" [T]he judicial duty of passing upon the constitutionality of an act of the General Assembly is one of great gravity and delicacy.

This Court presumes that any act promulgated by the General Assembly is constitutional and resolves all doubt in favor of its constitutionality." *Guilford Cty. Ed. of Educ. v. Guilford Cty. Ed. of Elections*, 110 N.C. App. 506, 511, 430 S.E.2d 681, 684 (1993) (citation omitted). "In challenging the constitutionality of a statute, the burden of proof is on the challenger, and the statute must be upheld unless its unconstitutionality clearly, positively, and unmistakably appears beyond a reasonable doubt or it cannot be upheld on any reasonable ground." *Id.* (emphasis added)

Article I, Section 30, of the North Carolina Constitution provides, in part: "A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed . . . ." N.C. Const. art. I, §30. However, our Supreme Court has "consistently pointed out that the right of individuals to bear arms is not absolute, but is subject to regulation." *State v. Dawson*, 272 N.C. 535, 546, 159 S.E.2d 1, 9 (1968). Thus, while the right to bear arms "'is protected and safeguarded by the Federal and State constitutions,'" it is also "'subject to the authority of the General Assembly, in the exercise of the police power, to regulate, but the regulation must be reasonable and not prohibitive, and must bear a fair relation to the preservation of the public peace and safety.'" *Id.* at 547, 159 S.E.2d at 10 (quoting

State v. Kerner, 181 N.C. 574, 579, 107 S.E. 222, 226 (1921) (Allen, J., concurring)).

N.C.G.S. §14-269.4 provides, in pertinent part: "It shall be unlawful for any person to possess, or carry, whether openly or concealed, any deadly weapon...in any building housing any court of the General Court of Justice." N.C. Gen. Stat. §14-269.4 (2009). In support of defendant's contention that this statute, as applied, is an unconstitutional violation of his right to bear arms, defendant argues that "no authority exists in the Constitution for the General Assembly to enact any legislation which would regulate or infringe on [his] right to peacefully and non-threateningly bear arms." In other words, in his argument to this Court, defendant does not acknowledge the prevailing rule long held by our Supreme Court that the right to bear arms, while protected by our Constitution, is subject to regulation by the General Assembly pursuant to its police power. See *Dawson*, 272 N.C. at 547, 159 S.E.2d at 10. Instead, in support of his contention that he has an "unrestricted" constitutional right to bear arms—which occupies the better part of his discussion with respect to this assignment of error—defendant suggests only that he has a right to protect himself from "a surprise attack," which could occur in a courthouse or on courthouse grounds where it is "know[n] that people are "unarmed," because "sometimes a cell phone and an armed

deputy are just not good enough." In light of defendant's apparent disregard of the long-recognized rule that the General Assembly can regulate the right to bear arms within proscribed limits, and because defendant's argument only seeks to persuade this Court that the General Assembly has "no authority" to "enact any legislation which would regulate or infringe on" his right to bear arms, we conclude that defendant has not met his burden of establishing the unconstitutionality of N.C.G.S. §14-269.4 as it was applied to him. See In re *House of Raeford Farms, Inc. v. Brooks*, 63 N.C. App. 106, 109, 304 S.E.2d 619, 621 (1983) ("As the party challenging the constitutionality of the statute, [defendant] has the burden of establishing its unconstitutionality."), appeal dismissed and disc. review denied, 310 N.C. 153, 311 S.E.2d 291 (1984). Accordingly, we overrule this assignment of error.

II.

Defendant next contends the trial court erred when it refused defendant's request to instruct the jury that it had to consider whether defendant "knowingly" or "willfully" violated N.C.G.S. §14-269.4. We disagree.

"It is within the power of the Legislature to declare an act criminal irrespective of the intent of the doer of the act." *State v. Hales*, 256 N.C. 27, 30, 122 S.E.2d 768, 771 (1961). "The doing of

the act expressly inhibited by the statute constitutes the crime." *Id.*; *State v. McDonald*, 133 N.C. 680, 684, 45 S.E. 582, 583 (1903) ("an act is forbidden by law to be done, the intent to do the act is the criminal intent and the law presumes the intent from the commission of the act."). "Whether a criminal intent is a necessary element of a statutory offense is a matter of construction to be determined from the language of the statute in view of its manifest purpose and design." *Hales*, 256 N.C. at 30, 122 S.E.2d at 771.

N.C.G.S. §14-269.4 was enacted for the purpose of "prohibit the possession, whether openly or concealed, of any weapon while on any state property." 1981 Sess. Laws 927, ch. 646, §1. The statute provides exceptions for superior and district court judges, magistrates, detention officers, and other military and law enforcement officers who are in possession of such weapons in a courthouse building while acting in the discharge of their official duties and who comply with other enumerated conditions, and also excepts those who are "in possession of a weapon [in a building housing a court of the General Court of Justice] for evidentiary purposes, to deliver it to a law-enforcement agency, or for purposes of registration." See N.C. Gen. Stat. §14-269.4. The portion of N.C.G.S. §14-269.4 with which defendant was charged, however, provides: "It shall be unlawful for any person to possess, or carry, whether openly or concealed,

any deadly weapon . . . in any building housing any court of the General Court of Justice." *Id.* Thus, the plain terms of the provision with which defendant was charged "do not include any reference to criminal intent or *mens rea*." See *State v. Haskins*, 160 N.C. App. 349, 352, 585 S.E.2d 766, 768, appeal dismissed and disc. review denied, 357 N.C. 580, 589 S.E.2d 356 (2003)

Defendant admits that, on 13 May 2008, he chose to enter the Pender County Courthouse while wearing his semiautomatic nine-millimeter Glock 26. Defendant does not assert that he met any of the enumerated exceptions of N.C.G.S. 14-269.4, but argues that, because he thought the courthouse only restricted the carrying of concealed weapons, and because he did not conceal his semiautomatic nine-millimeter Glock 26, he did not "knowingly" or "willfully" violate N.C.G.S. § 14-269.4. However, since the purpose of N.C.G.S. § 14-269.4 is "to prohibit the possession, whether openly or concealed, of any weapon while on any state property," see 1981 Sess. Laws 927, ch. 646, §1 (emphasis added) , and because the plain language of the statute with which defendant was charged does not require a consideration of whether an offender committed the offense "knowingly" or "willfully," we conclude that an offender's intent is not an essential element of N.C.G.S. § 14-269.4.

Accordingly, we hold the trial court did not err when it refused defendant's request to instruct the jury that it must consider whether defendant "knowingly" or "willfully" violated N.C.G.S. §14-269.4.

Because the remaining assignments of error set out in defendant's brief require that this Court accept defendant's contention that an offender's intent is an essential element of N.C.G.S. §14-269.4, our disposition on this issue as set forth above renders it unnecessary to address defendant's remaining arguments.

No error.

Judges ELMORE and GEER concur.

Report per Rule 30(e).

APPENDIX B

No. 115P10 FIFTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

STATE OF NORTH CAROLINA

v

DONALD SULLIVAN

From NC Court of Appeals
(09-526)
From Pender
(08CRS050921)

ORDER

Upon consideration of the notice of appeal from the North Carolina Court of Appeals, filed by the Defendant-Appellant on the 18th of March 2010 in this matter pursuant to G.S. 7A-30, and the motion to dismiss the appeal for lack of substantial constitutional question filed by the State of NC, the following order was entered and is hereby certified to the North Carolina Court of Appeals: the motion to dismiss the appeal is

"Allowed by order of the Court in conference, this the 26th of August 2010."

s/ Hudson, J.
For the Court

Upon consideration of the petition filed on the 18th of March 2010 by Defendant in this matter for discretionary review of the decision of the

North Carolina Court of Appeals pursuant to G.S. 7A-31, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Denied by order of the Court in conference, this the 26th of August 2010."

s/ Hudson, J.
For the Court

WITNESS my hand and official seal of the Supreme Court of North Calrolina, this the 1st of September 2010.

Christie Speir Cameron, Clerk
Supreme Court of North Carolina
s/M.C. Hackney, Assistant Clerk, Supreme Court Of North Carolina

APPENDIX C

Excerpt from "Without Intent" by Brian Welsh and Tiffany Joslyn, May 5, 2010, from The Heritage Foundation and the NACDL.

"A core principle of the American system of justice is that individuals should not be subjected to criminal prosecution and conviction unless they intentionally engage in inherently wrongful conduct or conduct that they know to be unlawful. Only in such circumstances is a person truly blameworthy and thus deserving of criminal punishment." This is not just a legal concept; it is the fundamental anchor of the criminal justice system...[There is] a common concern that expansive and ill-considered criminalization has cast the nation's criminal law enforcement adrift from this anchor. In the absence of a clearly articulated nexus between a person's conduct and his mental culpability, criminal laws subject the innocent to unjust prosecution and punishment for honest mistakes or actions that they had no reason to know are illegal...

"This principle of fair notice, which has been a cornerstone of our criminal justice system since the nation's founding, is embodied in the requirement that, with rare exceptions, the government must prove the defendant acted with *mens rea*—a 'guilty mind'—before subjecting him

to criminal punishment.

"For centuries, 'guilty mind', or *mens rea*, requirements restricted criminal punishment to those who were truly blameworthy and gave individuals fair notice of the law. No person should be convicted of a crime without the government having proved that he acted with a guilty mind—that is, that he intended to violate a law or knew that his conduct was unlawful or sufficiently wrongful so as to put him on notice of possible criminal liability. In a sharp break with this tradition, the recent proliferation of federal criminal laws has produced scores of criminal offenses that lack adequate *mens rea* requirements and are vague in defining the conduct that they criminalize...

"More than any other area of law, the criminal law, in its prohibitions and commands, as well as its power to punish, must be firmly grounded in fundamental principles of justice. Such principles are expressed in both substantive and procedural protections. One fundamental principle is embodied in the doctrine of fair notice. The fair notice doctrine requires that, in order for a person to be punished criminally, the offense with which she is charged must provide adequate notice that the conduct in which she engaged was prohibited. The Supreme Court has recognized that fair notice is a component for the Constitution's due process protections.

"For example, in the course of reversing the convictions of civil rights protestors because the law under which they were convicted was 'void for vagueness' (a species of the fair notice doctrine), the Supreme Court stated: 'No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids.' It is thus a fundamental principle of due process that 'a criminal law must give fair warning of the conduct it makes a crime.'

"Related to fair notice is the principle that the government must prove both 'an evil-meaning mind' and 'an evil-doing hand' before criminal punishment may justly be imposed. This dual requirement is typically referred to by the Latin terms *mens rea* and *actus reus*, which translate to 'guilty mind' and 'guilty act.' Whereas the *actus reus* is generally objective and physical in nature, the *mens rea* is generally subjective and psychological. Both are necessary in order to impose criminal punishment; neither alone is sufficient. The *mens rea* requirement has been a part of Anglo-American law for over six centuries, and requiring the government to prove that a defendant had a guilty mind at the time she committed a guilty act 'is the rule of, rather than the exception to, the principles of Anglo-American criminal jurisprudence.'

"The Supreme Court has described this principle as being 'as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil...'"

APPENDIX D

Cited Reference Law

1. TITLE 18 - CRIMES AND CRIMINAL PROCEDURE, PART I - CRIMES, CHAPTER 43 - FALSE PERSONATION; HEAD; Sec. 912:

"Officer or employee of the United States. STATUTE: Whoever falsely assumes or pretends to be an officer or employee acting under the authority of the United States or any department, agency or officer thereof, and acts as such, or in such pretended character demands or obtains any money, paper, document, or thing of value, shall be fined under this title or imprisoned not more than three years, or both."

2. Act of Congress of June 1, 1789, 1 Story's L. U. S. p. 1, to regulate the time and manner of administering certain oaths. as follows:

"Sec. 1. Be it enacted, &c., That the oath or affirmation required by the sixth article of the constitution of the United States, shall be administered in the form following, to wit, "I, A B, do solemnly swear or affirm, (as the case may be,) that I will support the constitution of the United States...

"Sec. 3. That the members of the several state legislatures, at the next session of the said legislatures respectively, and all executive and judicial officers of the several states, who have been heretofore chosen or appointed, or, who shall be chosen or appointed before the first day of August next, and who shall then be in office, shall, within one month thereafter, take the same oath or affirmation, except where they shall have taken it before which may be administered by any person authorized by the law of the state, in which such office shall be holden, to administer oaths. And the members of the several state legislatures, and all executive and judicial officers of the several states, who shall be chosen or appointed after the said first day of August, shall, before they proceed to execute the duties of their respective offices, take the foregoing oath or affirmation, which shall be administered by the person or persons, who, by the law of the state, shall be authorized to administer the oath of office; and the person or persons so administering the oath hereby required to be taken, shall cause a record or certificate thereof to be made, in the same manner as, by the law of the state, he or they shall be directed to record or certify the oath of office." [Emphasis mine]

3. NCGS 9-14. Jury sworn; judge decides competency:

"The clerk shall, at the beginning of court, swear all jurors who have not been selected as grand jurors. Each juror shall swear or affirm that he will truthfully and without prejudice or partiality try all issues in criminal or civil actions that come before him and render true verdicts according to the evidence. Nothing herein shall be construed to disallow the usual challenges in law to the whole jury so sworn or to any juror; and if by reason of such challenge any juror is withdrawn from a jury being selected to try a case, his place on that jury shall be taken by another qualified juror. The presiding judge shall decide all questions as to the competency of jurors."

4. NCGS 11-11, "Oaths of sundry persons: Forms":

"The oaths of office to be taken by the several persons hereafter named shall be in the words following the names of said persons respectively, **after taking the separate oath required by Article VI, Section 7 of the Constitution of North Carolina** (Emphasis mine):...

Oath for Petit Juror

"You do solemnly swear (affirm) that you will truthfully and without prejudice or partiality try all issues in civil or criminal actions that come before you and give true verdicts according to the evidence, so help you, God."

5. 14-269.4. Weapons on State property and in courthouses.

It shall be unlawful for any person to possess, or carry, whether openly or concealed, any deadly weapon, not used solely for instructional or officially sanctioned ceremonial purposes in the State Capitol Building, the Executive Mansion, the Western Residence of the Governor, or on the grounds of any of these buildings, and in any building housing any court of the General Court of Justice. If a court is housed in a building containing nonpublic uses in addition to the court, then this prohibition shall apply only to that portion of the building used for court purposes while the building is being used for court purposes.

This section shall not apply to:

(1) Repealed by S.L. 1997-238, s. 3, effective June 27, 1997,

(1a) A person exempted by the provisions of G.S. 14-269(b),

(2) through (4) Repealed by S.L. 1997-238, s. 3, effective June 27, 1997,

(4a) Any person in a building housing a court of the General Court of Justice in possession of a weapon for evidentiary purposes, to deliver it to a law-enforcement agency, or for purposes of registration,

(4b) Any district court judge or superior court judge who carries or possesses a concealed handgun in a building housing a court of the

General Court of Justice if the judge is in the building to discharge his or her official duties and the judge has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24,

(4c) Firearms in a courthouse, carried by detention officers employed by and authorized by the sheriff to carry firearms,

(5) State-owned rest areas, rest stops along the highways, and State-owned hunting and fishing reservations.

Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor. (1981, c. 646; 1987, c. 820, s. 1; 1993, c. 539, s. 166; 1994, Ex. Sess., c. 24, s. 14(c); 1997-238, s. 3; 2007-412, s. 1; 2007-474, s. 1.)

6. NCGS 14-288-7:

(a) Except as otherwise provided in this section, it is unlawful for any person to transport or possess off his own premises any dangerous weapon or substance in any area:

(1) In which a declared state of emergency exists; or

(2) Within the immediate vicinity of which a riot is occurring.

(b) This section does not apply to persons exempted from the provisions of G.S. 14-269 with

respect to any activities lawfully engaged in while carrying out their duties. (c) Any person who violates any provision of this section is guilty of a Class 1 misdemeanor. (1969, c. 869, s. 1; 1993, c. 539, s. 192; 1994, Ex. Sess., c. 24, s. 14(c).)

7. NCGS 128-5, "Oath required before acting: penalty:

"Every officer and other person required to take an oath of office, or an oath for the faithful discharge of any duty imposed on him, and also the oath appointed for such as hold any office of trust or profit in the State, shall take ALL said oaths before entering on the duties of the office, or the duties imposed on such person, on pain of forfeiting five hundred dollars ($500.00) to the use of the poor of the county in or for which the office is to be used, AND OF BEING EJECTED FROM HIS OFFICE or place by proper proceedings for that purpose." (Emphasis and capitalization mine)

8. NCGS 128-6, "Persons admitted to office deemed to hold lawfully":

"Any person who shall, by the proper authority, **be admitted and sworn into any office**, shall be held, deemed, and taken, by force of such admission, to be rightfully in such office until, by judicial sentence, upon a proper proceeding,

he shall be ousted therefrom, or **his admission thereto be, in due course of law, declared void**. (Const., art. 4, s. 25)" [Emphasis mine]

9. § 14-269.1. Confiscation and disposition of deadly weapons.

Upon conviction of any person for violation of G.S. 14-269, G.S. 14-269.7, or any other offense involving the use of a deadly weapon of a type referred to in G.S. 14-269, the deadly weapon with reference to which the defendant shall have been convicted shall be ordered confiscated and disposed of by the presiding judge at the trial in one of the following ways in the discretion of the presiding judge.

(1) By ordering the weapon returned to its rightful owner, but only when such owner is a person other than the defendant and has filed a petition for the recovery of such weapon with the presiding judge at the time of the defendant's conviction, and upon a finding by the presiding judge that petitioner is entitled to possession of same and that he was unlawfully deprived of the same without his consent.

(2), (3) Repealed by Session Laws 1994, Ex. Sess., c. 16, s. 2.

(4) By ordering such weapon turned over to the sheriff of the county in which the trial is held or his duly authorized agent to be destroyed. The sheriff shall maintain a record of the destruction thereof.

(4a) Repealed by Session Laws 2005-287, s. 3, effective August 22, 2005.

(4b) By ordering the weapon turned over to a law enforcement agency in the county of trial for (i) the official use of the agency or (ii) sale, trade, or exchange by the agency to a federally licensed firearm dealer in accordance with all applicable State and federal firearm laws. The court may order a disposition of the firearm pursuant to this subdivision only upon the written request of the head or chief of the law enforcement agency and only if the firearm has a legible, unique identification number. If the law enforcement agency sells the firearm, then the proceeds of the sale shall be remitted to the appropriate county finance officer as provided by G.S. 115C-452 to be used to maintain free public schools. The receiving law enforcement agency shall maintain a record and inventory of all firearms received pursuant to this subdivision.

(5) By ordering such weapon turned over to the North Carolina State Bureau of Investigation's Crime Laboratory Weapons Reference Library for official use by that agency. The State Bureau of Investigation shall maintain a record and inventory of all such weapons received.

(6) By ordering such weapons turned over to the North Carolina Justice Academy for official use by that agency. The North Carolina Justice Academy shall maintain a record and inventory

of all such weapons received. (1965, c. 954, s. 2; 1967, c. 24, s. 3; 1983, c. 517; 1989, c. 216; 1993, c. 259, s. 2; 1994, Ex. Sess., c. 16, s. 2; c. 22, s. 23; 1997-356, s. 1; 2003-378, s. 5; 2005-287, s. 3.)

APPENDIX E

New York State Bar Journal
March/April 1997

Public Officers, Beware! No Excuses Accepted
By Carolyn H. Mann

Vetere v. Ponce, (1) emanating from the jurisdiction of the Town/Village of Harrison, has recently cast significant **public** opinion on § 30, **Public Officers** Law. (2) Although surrounded by political mischief, the case ultimately concerns the perceived right of a duly elected **public** official to retain his elected post, even though not in strict compliance with a qualifying section of **Public Officers** Law. The New York Law Journal (3) has headlined its piece on this case (and its most curious sequence of political events) with the words, "Technical Omission Costs Official His Post." We question here whether non-compliance with this statute is properly characterized as a "technical" omission. We submit that the failure to timely file an oath of office is an important and justifiable disqualification for holding **public** office. Those who are hurt by the consequences of failure to strictly comply, must resignedly accept their fate because, as we intend to show, the purpose of the statute is to secure a trust rather than to punish the careless.

No Exceptions!

Briefly, § 30(1)(h) obligates a public official, whether elected or appointed, to file an oath of office, within 30 days of the commencement or notification of his term. The New York Courts have heard several cases pleading relief from a direct reading of this section, yet all pleas have been to no avail. In each and every case, the courts have read the clear and undisputed language of the statute finding no latitude to permit any exceptions. This piece brings to light the cases of the various officeholders whose positions were properly declared vacant by operation of law for non-compliance with the mandate to timely file an oath of office. We will probe why this law, with its seemingly harsh results, is set so firmly into New York Law and whether such law and its consequences should continue undisturbed.

Let us first examine the pleas of the various petitioners asking that their particular set of circumstances be judged worthy of exception when the statute clearly leaves room for none.

In 1913, in *People v. Keator*, (4) the relator filed his oath 17 days after commencement of his duties and in spite of the fact that the relator received the highest number of votes, the Board passed a resolution reciting the existence of a vacancy and properly proceeded to fill the

vacancy by appointing another individual. The relator pleaded relief from the Board's action appointing someone other than himself, the duly elected official. The Court concluded:

"Taking the constitutional oath of office being a condition precedent to relator being entitled to enter upon the duties of the office, and hence to his right to maintain an action to oust defendant and to recover possession of the office, we conclude that the relator is not entitled to succeed in this action... It would be unfortunate, if the refusal or neglect of a person elected to such office to qualify, as required by the Constitution of the state, could deprive a town of such an officer, as the position is one of importance, and particularly so in certain contingencies."

No exceptions!

In the Matter of *Comins v. County of Delaware*, (5) a **public** officer entered upon his duties and performed them for some time only to find his position declared vacant. He pleaded before the court that his removal must be annulled for surely his service for such an extended period surely conferred rights of legitimacy to his claim to office. The court disagreed, repeated the clear words of § 30 and continued:

"The fact that the Board did not earlier move to dismiss petitioner, does not, in our view,

constitute an appointment of petitioner to his position. When a person appointed to office fails to timely file his oath of office, neither notice nor judicial procedure is necessary, the office is automatically vacant and may be filled by the proper appointive power. Consequently,...no hearing on charges was required in order to dismiss him from office."

No exceptions!

Perhaps the circumstances set forth in *McDonough v. Murphy* (6) would lead one to expect the court to annul the declaration of a vacancy. Here, two appointed members of the College Board entered upon their official duties and subsequently were officially notified of the appointments. Both filed the oath within 30 days of that official notification, but the Court allowed the vacancy to stand, stating:

". . . when by one's own actions it is clear that a person knows of his appointment, he should not be allowed to wait indefinitely before filing an oath of office. This interpretation is mandated by the necessity to file an oath of office, which is intended to be part of the requirements making an officer fully qualified to carry out the duties of his office. . . Thus, once plaintiffs have taken actions as official members of the board, as has been done here, they cannot be heard to claim that they had no notice of their appointments, for

without a doubt the contrary is true. [Emphasis added.]"

No exceptions!

Neither is ignorance of the law an excuse for non-compliance with the requirement for a timely filing, as the Court declared in *Boisvert v. County of Ontario*, (7) where petitioner pleaded he was unaware of § 30 **Public Officers** Law. The court ruled:

"The obligation imposed by the **Public Officers** Law statute is personal to plaintiff, it is an act he is required to do and the office became vacant by the mere failure to file the oath, whether or not the defendants knew or were chargeable with notice that plaintiff had failed to file his oath, and they are not required to make any declaration or give any notice. On his default in filing his official oath "the appointment was vitiated and the office * * * became vacant" [citing *Ginsberg v. City of Long Beach*, 286 N.Y. 400, 36 N.E.2d 637; and also *People ex rel. Walton v. Hicks*, infra]."

No exceptions!

That the statute leads to an unambiguous reading is probably nowhere better stated than in *Walton v. Hicks*, (8) where the Court ruled:

"This statute is emphatic and unequivocal. It does not seem possible that it can be

misunderstood. In case a person appointed to office neglects to file his official oath within 15 [now 30] days after notice of appointment or within 15 [now 30] days after the commencement of the term of office, the office becomes vacant ipso facto. That is all there is to it. No judicial procedure is necessary; no notice is necessary; nothing is necessary. The office is vacant, as much so as though the appointee were dead; there is no incumbent, and the vacancy may be filled by the proper appointive power.

Certainly, no further explanations of § 30 were necessary. Yet, in 1990 in response to a request, the State Board of Equalization and Assessment (9) clarified the "emphatic and unequivocal" words of the statute:

Both the Attorney General (1976, Op. Atty. Gen. (Inf.) 336) and the State Comptroller (10 Op. State Compt. 332) have issued opinions that the failure of a **public** officer to file an oath is not correctable, because the statute specifically creates the vacancy without providing a remedy. The provisions of **Public Officers** Law § 30 creates a vacancy which the appointing authority (e.g., town board, county executive, county legislature) may fill at any time (**Public Officers** Law, § 38).

The appointive assessor or county director who fails to file the oath of office within 30 days is in the same position as any de facto officer; his or

her actions are valid, but employment is subject to immediate termination (*Williamson v. Fermaille*, 31 A.D. 438, 298 N.Y.S. 2d 557 (4th Dept. 1969), aff'd 26 N.Y. 2d 731, 257 N.E. 2d 285, 309 N.Y.S. 2d 35 (1970); *Vescio v. City Manager, City of Yonkers*, 69 Misc. 2d 68, 389 N.Y.S. 2d 357 (Sup. Ct. Westchester Co. 1972), aff'd 41 A.D. 2d 833, 342 N.Y.S. 2d 376 (2d Dept. 1973); 1979, Op. Atty. Gen. 198). Although the failure to file the oath cannot be remedied, the Attorney General has concluded that there is no bar to the appointment of the same individual to the same office (1978, Op. Atty. Gen. (Inf.) 833). Presumably, such reappointed official would be sure to timely file the oath the second time.

It is important to note that nowhere in the opinion is any mention or reference made to any exceptions to strict compliance with § 30; clearly the legislature intended none.

The administrative explanation of § 30 has been exhaustive and the reiteration of the statute's words frequent. Nevertheless, additional cases managed to find their way into New York courtrooms. In *Lombino v. Town Board of the Town of Rye* (10) petitioner claimed compliance with § 30 pleading his filing was only one day late. The Court was unimpressed and the Appellate Division stated:

"The Supreme Court denied the defendants' motion for summary judgment on the ground

that there is a factual issue of whether the plaintiff filed his oath of office on January 3, 1991. However, contrary to plaintiff's contention, even if he filed his oath of office on January 3, 1991, the filing was still untimely. **Public Officers** Law § 30 provides that an appointive office shall become vacant for failure to file an official oath "within thirty days after [the] [sic] appointment, or within thirty days after the commencement of such term." Here, the plaintiff was notified of his appointment as Assessor in November 1990, and began working on December 3, 1990. Thus, even if he filed his oath of office on January 3, 1991, the filing was more than 30 days after the notification and commencement of his term. Thus, the Town Board properly declared the Office of Assessor vacant."

No exceptions!

Proper Judicial Role: Declaring What the Law is, Not What it Should Be

In the most recent case, *Vetere v. Ponce*, supra, the case which catapulted § 30 onto a red-hot front burner, petitioner sought to be excused from strict compliance with the statute by arguing first, that petitioner was not notified by the Town/Village Clerk to timely file, as required by Law, (11) claiming, in effect, ignorance of a legal duty and second, that petitioner was

justifiably distracted from his duty because of the concurrent illness and death of his spouse.

Politics takes center stage here. As set forth in the decision, the Town/Village Clerk of Harrison arranged to have all the Republican elected officials report to Town Hall to sign and file the official oaths. Curiously, however, no one reminded or told petitioner, the sole Democrat on the Board, to be in attendance. On February 16, seventeen days after the expiration of the 30-day period, the Town Clerk issued a Certificate of Vacancy and declared Mr. Vetere's position vacant because of the failure to timely file his oath. The Board then proceeded, as is its right under law, to appoint another (Republican) to fill the vacancy. This action caused great public outcry, however, urging the appointee to resign. Mr. Vetere was promptly thereafter appointed to fill his own vacancy until the next annual election, at which time he would have to run to fulfill the balance of his term.

Mr. Vetere sought to be reinstated and reclaim his original position and term and pleaded with the Court to be excused from strict compliance with § 30 due to these particular circumstances. The Court, however, found itself compelled by a clear reading of the statute and appropriate case law to find petitioner's elected position vacant indeed, stating:

"Notwithstanding equitable considerations and

respondent's consent to reinstatement, the court can only direct reinstatement in the event it finds petitioner was improperly removed as a matter of law. Whether respondents acted unfairly or took advantage of petitioner during a period of personal crisis, therefore, is irrelevant. If this result is harsh, as it is in this case, the remedy lies with the Legislature.... In this case, since petitioner did not file within 30 days of commencement of his term, the office became vacant on Feb. 1, 1996.... The Town Board and Village Trustees were entitled, in turn, to declare a vacancy and to fill it." (12)

The situation presented in *Vetere* is illustrative of the problems faced when considering how to avoid equity considerations, and is instructive. Both the Election Law and the Village Law seek to minimize potentially harsh results imposed by § 30 by requiring the Village Clerk to notify officials of the § 30 mandate. The difficulty here lies with enforcement, however. If meeting one's official duty is paramount, enforcement of a law requiring a clerk to notify others of their duty might result in the removal of said clerk for non-performance or non-feasance. This produces a harsh result in itself, and neither does it eliminate, ameliorate or excuse the duty of the official to timely file. There are simply too many possible equity considerations to statutorily exempt some and not others. No excuses, therefore, can be deemed worthy as exceptions.

Finally, Supreme Court Justice Nicholas Colabella, who delivered the opinion in *Vetere*, made a truly correct observation. If § 30 can produce a popularly perceived harsh result by not permitting any exceptions to its mandate, the remedy lies not with the Court but with the Legislature. Members of the New York Bar must agree, for it is surely the proper role of the judiciary to declare what the law is, and not what it ought to be.

Since no exceptions can be accepted by the courts to relieve the demands of the "emphatic and unequivocal" language of the statute, (13) Public Officer, **Beware**! No excuses under New York Law can remedy your unenviable situation.

Non-Compliance is Not a "Technical Omission"

Is the law acceptable? If not, what ought it to be? Is the law too harsh in its result by not permitting exceptions to the 30-day limit for filing the qualifying oath? We know that the limit was already extended from 15 to 30 days. Should the limit be two months? Is a limit necessary at all? Why should the office become vacant by operation of law "so much so as though the appointee were dead"? (14) What is all this fuss about an oath of office not being timely filed? Is it merely a "technical" bugaboo that should be significantly eased? Or, is the demand for strict compliance rational and wise? This author believes the latter.

The New York Legislature apparently believes the taking of the oath of office to be a critical qualification for those in public office accepting the public trust. An oath, we are all aware, is a solemn promise the taking of which is described as "burdening the conscience" where something is present to distinguish between an oath and a bare assertion. (15)

An oath, and its required accompanying and distinguishing act, is what can hopefully establish trust between people. Through this device in a public setting, the people are offered some assurance that the words and actions of public officers are possibly being carefully guided by something other than the official's own set of self serving principles. The swearing-in ceremony is visual and psychologically binding; the filing is written and legally binding. Is there another act which could as simply convey a solemn promise to behave with a full measure of integrity? How else might the public accept the offer of honest public service if not with a solemn, believable offer being made, by way of oath, to create a contract with all the rights and responsibilities we assume are contained in it?

The public must be offered something which fosters confidence in the official's moral responsibility. The official's conscience must be seen to be sufficiently burdened by something to help assure that the desired devotion to the

public's trust might reach broadly into the official's public relations and daily decision-making. It is this promise, this oath of office, which helps to hold a civil society together.

Certainly, it is an easy task to file an oath of office within 30 days of the commencement or notification of one's term, and no one in public administration should be statutorily charged with informing another official of his or her duties. This is more properly the job of the official and his legal counsel. The purpose of the requirement reflects wise reasoning and speaks to the act being most critical for the health of the compact among the governed and the governors and, therefore, can permit no exception.

The "emphatic and unequivocal" language of § 30, Public Officers Law represents one of the important links in the web of our representative democracy and is on the far other side of a mere "technical" nuisance. To reiterate, Public Officer, Beware! The law as it is presently set forth is there to protect, not to punish. No excuses will save a public term of office without taking and timely filing a solemn promise to the people served.

1 New York Law Journal, April 23, 1996, p. 29, col. 6.

2 Section 30, entitled Creation of vacancies, provides, in part:

1. Every office shall be vacant upon the happening of one of the following events before the expiration of the term thereof:...

h. His refusal or neglect to file his official oath or undertaking, if one is required, before or within thirty days after the commencement of the term of office for which he is chosen, if an elective office, or if an appointive office, within thirty days after notice of his appointment or within thirty days after the commencement of such term...

Personnel on Active Duty with the Armed Forces have a 90 day limit imposed for filing, after which time a vacancy may be declared by operation of law.

3 Cerisse Anderson, "Technical Omission Costs Official His Post," New York Law Journal, April 22, 1996, p. 1.

4 *People v. Keator*, 166 App. Div. 368, 154 N.Y.S. 1007.

5 66 A.D. 2d 966, 412 N.Y.S. 2d 428.

6 92 A.D. 2d 1022, 461 N.Y.S. 2d 439.

7 89 Misc. 2d 183, 391 N.Y.S. 2d 49, aff'd 57 A.D. 2d 1051, 395 N.Y.S. 2d 617.

8 173 App. Div. 338, 158 N.Y.S. 757, aff'd 221 N.Y. 503, 116 N.E. 1069.

9 Opinion, November 19, 1990.

10 1994; 206 A.D. 2d 462, 614 N.Y.S. 2d 564, leave to appeal denied 84 N.Y. 2d 807, 621 N.Y.S. 2d 516, 645 N.E. 2d 1216.

11 Section15-128 Election Law: "The clerk of the village shall, within three days after the election of a village officer, notify each person elected of his election, and of the date thereof, and that, in order to qualify: he is required to file his oath of office... and that upon his failure so to do he will be deemed to have declined the office."

12 The Court, citing the *Lombino* case and others, observed that the failure to file constitutes an automatic vacancy and is not subject to a cure *nunc pro tunc* by a belated filing.

13 *Walton v. Hicks*, supra.

14 *Walton v. Hicks*, supra.

15 *O'Reilly v. People of the State of New York*, 86 N.Y. 154, 1881. Judge Finch of the Court of Appeals further stated:

"Some form of an oath has always been required, for the double reason that only by some unequivocal form could the sworn be distinguished from the unsworn averment, and the sanctions of religion add their solemn and binding force to the act. (Pandects, xii, 2; 3

Coke's Inst. 165; 1 Phil. on Ev. 15; 1 Starkie on Ev. 23; Lord HARDWICKE, in *Omychund v. Barker*, 1 Atkyns, 21; Tyler on Oaths, 15; 1 Greenleaf on Ev., §§ 328, 371; 1 Alison's Crim. Law, 474; 3 Wharton's Am. Crim. Law, § 2205; 2 Arch. Crim. Pl., 1723.)... [T]hese sanctions have grown elastic, and gradually accommodated themselves to differences of creed, and varieties of belief, so that, as the Christian is sworn upon the Gospels, and invokes the Divine help to the truth of his testimony, the Jew also may be sworn upon the Pentateuch, the Quaker solemnly affirm without invoking the anger or aid of Deity, and the Gentoo kneel before his Brahmin priest with peculiar ceremonies... The changes of form incident to the growth of nations and of commerce have been serious, but have not dispensed with a form entirely. . . A wide scope, a large liberty, is thus given to the form of the oath, but some form remains essential. Something must be present to distinguish between the oath and the bare assertion. An act must be done, and clothed in such form as to characterize and evidence it. . ."

* **Carolyn H. Mann** was admitted to the NYS Bar in 1994, and is partner with Mann & Mann of Port Chester. She holds a BA in Art History and went on to NYU and received a Master of Urban Planning degree.

APPENDIX F

Expanded Case Cite Quotations (In order of appearance)

1. *Wickard v. Filburn*, 317 US 111 (1942):

"[T]he importance of accepting or anticipating benefits from the State can be very costly to one's protected rights We can hardly find a denial of due process in these circumstances, particularly since it is even doubtful that appellee's burdens under the program outweigh his benefits. **It is hardly lack of due process for the Government to regulate that which it subsidizes.**" [Emphasis mine]

2. *University of North Carolina vs. Foy*, 2 Howard NC 310, 1805:

"The Constitution is certain and fixed; it contains the permanent will of the people, and is the supreme law of the land. **It is paramount to the power of the Legislature, and can be revoked or altered only by the authority that made it.** What are legislatures? Creatures of The Constitution: They owe their existence to the Constitution; They derive their power from the Constitution. It is their Commission; and, therefore, all their acts must be conformable to it, or else they will be void. The Constitution is the work or will of the people themselves, in **their original sovereign and unlimited capacity.**

Law is the work or will of the Legislature in their derivative or subordinate capacity. The one is the work of the Creator and the other of the creature. The Constitution fixes limits to the exercise of the Legislative authority, and prescribes the orbit within which it must move. Whatever may be the case in other countries, yet in this there can be no doubt that every act of the Legislature repugnant to the Constitution is absolutely void." (Emphasis Added)

3. *State v. Dawson*, 272 N.C. 535, 546, 159 S.E.2d 1, 9 (1968), Quoting Chief Justice I. Beverly Lake, Jr.:

"I am unable to understand how a right can be regulated without being infringed. The language of the present Constitution appears to be plain and unequivocal. It does not say that the right to bear arms cannot be infringed except for the promotion of peace and good order in the community. It says the right shall not be infringed. It is immaterial whether that is wise or unwise. That is what the Constitution says. The better view on this point seems to be that stated by Clark, C.J., in *State v. Kerner,* 181 N.C. 574 [*infra*], as follows:

'The Constitution of this State, sec. 24, Art. I, [Obsolete] which is entitled, 'Declaration of Rights', provides: 'The right of the people to keep and bear arms shall not be infringed,' adding, 'Nothing herein contained shall justify the

practice of carrying concealed weapons, or prevent the Legislature from enacting penal statutes against said practice.' This exception indicates the extent to which the right of the people to bear arms can be restricted; that is, the Legislature can prohibit the carrying of concealed weapons, but no further.'" (Emphasis added)

4. *Hale v. Henkel,* 201 U.S. 43, 1906):

"[W]e are of the opinion that there is a clear distinction in this particular between an individual and a corporation...The individual may stand upon his constitutional rights as a citizen...He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the state or to his neighbors to divulge his business, or to open his doors to an investigation, so far as it may tend to criminate him. He owes no such duty to the state, since he receives nothing therefrom, beyond the protection of his life and property. His rights are such as existed by the law of the land long antecedent to the organization of the state, and can only be taken from him by due process of law, and in accordance with the Constitution...He owes nothing to the public so long as he does not trespass upon their rights.

"Upon the other hand, the corporation is a creature of the state...It receives certain special

privileges and franchises, and holds them subject to the laws of the state and the limitations of its charter...While an individual may lawfully refuse to answer incriminating questions..., it does not follow that a corporation, vested with special privileges and franchises, may refuse to show its hand when charged with an abuse of such privileges."

5. *U.S. v. Johnson* (76 Fed, Supp. 538), Quoting federal District Court Judge James Alger Fee:

"...because of what appears to be a lawful command on the surface, may citizens, because of their respect for the what only appears to be law, are cunningly coerced into waiving their rights due to ignorance. The privilege against self-incrimination is neither accorded to the passive resistant, not to the person who is ignorant of his rights, nor to one who is indifferent thereto. It is a fighting clause. Its benefits can be retained only by sustained combat. It cannot be claimed by attorney or solicitor. It is valid only when insisted upon by a belligerent claimant in person." *McAlister vs. Henkle*, 201 U. S. 90, 26 S.Ct. 385, 50 L. Ed. 671; *Commonwealth vs. Shaw*, 4 Cush. 594, 50 Am. Dec. 813; *Orum vs. State*, 38 Ohio App. 171, 175 N.E. 876; [Quoted in *US v. Mincker*, 350 US 179, p. 187]

6. *Clearfield Trust Co. v. United States*, 318 U.S. 363-371 (1942):

"Governments descend to the level of a mere private corporation, and take on the characteristics of a mere private citizen... [w]here private corporate commercial paper [Federal Reserve Notes] and securities [checks] is concerned... For purposes of suit, such corporations and individuals are regarded as entities entirely separate from government."

7. *Browne v. Keene*, 33 US 112 (1834):

"The averment of jurisdiction of the United States courts must be positive, and the declaration must expressly state the fact on which such jurisdiction depends; and, where the jurisdiction depends on the diverse citizenship of the parties, an allegation that defendant is "a citizen or a resident" of a certain state is insufficient to confer jurisdiction, since, consistently with such averments, he may be either."

8. *Georgia v. Pennsylvania R. Co.*, 324 U.S. 439, 446, 89 L. Ed. 1051, 1056 (1945):

"It is, of course, true that Georgia does not have a right to invoke the original jurisdiction of the Court merely because there may be involved a judicial question. It is not enough that a State is plaintiff. The original jurisdiction is confined to civil suits where damage has been inflicted or is threatened, not to the enforcement of penal statutes of a State." *Wisconsin v. Pelican Ins.*

Co., 127 U. S. 265, 127 U. S. 297-300.

9. *Wisconsin v. Pelican Ins. Co.*, 127 U.S. 265 (1888):

"The position that the jurisdiction conferred by the Constitution upon this Court in cases to which a state is a party is limited to controversies of a civil nature, does not depend upon mere inference from the want of any precedent to the contrary, but has express legislative and judicial sanction. By the Judiciary Act of September 24, 1789, c. 20, § 13, it was enacted that:

"'The supreme court shall have exclusive jurisdiction of controversies of a civil nature where a state is a party...', 1 Stat. 80. That act, which has continued in force ever since, and is embodied in §687 of the Revised Statutes, was passed by the first Congress assembled under the Constitution, many of whose members had taken part in framing that instrument, and is contemporaneous and weighty evidence of its true meaning. *Ames v. Kansas,* 111 U. S. 449, 111 U. S. 463-464."

10. *Wright v. US* 302 US 583 (1938):

"To disregard such a deliberate choice of words and their natural meaning, would be a departure from the first principle of Constitutional interpretation. "In expounding the Constitution of the United States", said Chief Justice Taney in

Holmes v. Jennison, 14 Peter 540, 570-1, "every word must have its due force and appropriate meaning; for it is evident from the whole instrument that no word was unnecessarily used, or needlessly added...Every word appears to have been weighed with the utmost deliberation and its force and effect to have been fully understood."

11. *Cheek v. United States*, 498 U.S. 192 (1991):

"A...good faith belief that one is not violating the law negates willfulness, whether or not the claimed belief or misunderstanding is objectively reasonable...Statutory willfulness...is the voluntary, intentional violation of a known legal duty."

12. *Commissioner of Corrections, et al*, 393 US 483, 490 – "In reversing the District Court, the Court of Appeals relied on the power of the State to restrict the practice of law to licensed attorneys as a source of authority for the prison regulation. The power of the States to control the practice of law cannot be exercised so as to abrogate federally protected rights."

13. *Powell v. Alabama*, 287 U.S. 45 (1932) - "It is hardly necessary to say that ...a defendant should be afforded a fair opportunity to secure counsel of his own choice...[If a] court were

arbitrarily to refuse to hear a party by counsel, employed by and appearing for him...such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense." *(See also Reynolds v. Cochran*, 365 US 525)

14. *US v. Tarlowski*, 305 F.Supp. 112, 1969 – "For a government official to mouth in a ritualistic way part of the warning about the right to counsel, while excluding the person relied upon as counsel is, in effect, to reverse the meaning of the words used."

15. *Brotherhood of Railroad Trainmen v. Virginia ex rel. Virginia State Bar*, 377 US 1,6 – "...in regulating the practice of law, a State cannot ignore the rights of individuals secured by the Constitution. For as we said in *NAACP v. Button*, 371 US at 429, 'a State cannot foreclose the exercise of constitutional rights by mere labels...That traditional, closed-shop attitude is utterly out of place in the modern world where claims pile high and much of the work of tracing and pursuing them requires the patience and wisdom of a layman rather than the legal skills of a member of the bar."